

4-8-2010

Schultz v. State Clerk's Record Dckt. 37370

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"Schultz v. State Clerk's Record Dckt. 37370" (2010). *Idaho Supreme Court Records & Briefs*. 1037.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/1037

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law.

LAW CLERK

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

SUPREME COURT NO. 37370-2010
DISTRICT COURT NO.CV-09-47*D &
CV 09-221*D

WALLY KAY SCHULTZ
Petitioner/Appellant

Vs.

STATE OF IDAHO
Respondent/Respondent on Appeal

Appealed from the District Court of the Fifth Judicial District
of the State of Idaho, in and for
Minidoka County

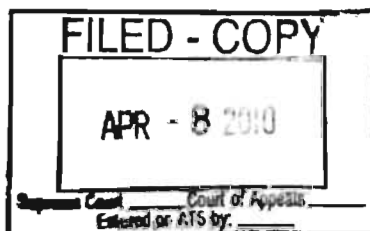
Honorable Michael R. Crabtree, District Judge

Lawrence Wasden, IDAHO ATTORNEY GENERAL, P. O.
Box 83720, Boise, ID 83720-0010
Attorney for Respondent State of Idaho

Molly Huskey, STATE APPELLATE PUBLIC DEFENDER,
3647 Lake Harbor Ln. Boise, ID 83703
Attorney for Appellant WALLY KAY SCHULTZ

Filed this 25TH day of February, 2010.

Duane Smith, Clerk
Santos Garza, Deputy



37370 37371

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

SUPREME COURT NO. 37370-2010
DISTRICT COURT NO. CV-2009-47*D &
 CV 2009-221 *D

WALLY KAY SCHULTZ

Petitioner/Appellant

Vs.

STATE OF IDAHO

Respondent/Respondent on Appeal

Appealed from the District Court of the Fifth Judicial District
of the State of Idaho,
in and for Minidoka County

Honorable Michael R. Crabtree, District Judge

Lawrence Wasden, IDAHO ATTORNEY GENERAL, P. O. Box 83720, Boise, ID 83720

Attorney for Respondent State of Idaho

Molly J. Huskey, IDAHO STATE APPELLATE PUBLIC DEFENDER,
3647 Lake Harbor Lane, Boise, ID 83703

Attorney for Appellant WALLY KAY SCHULTZ

TABLE OF CONTENTS

	FILED	PAGE
Title Page		I
Table of Contents		II
Index		V
Register of Actions		VIII
Motion and Affidavit for Fee Waiver (Prisoner) CV 2009-47	01-13-09	001
Motion and Affidavit in Support for Appointment of Counsel CV 2009-47	01-13-09	009
Petition and Affidavit for Post conviction Relief CV 2009-47	01-13-09	014
Order Granting Motion for Appointment of Counsel CV 2009-47	01-21-09	021
Motion to continue CV 2009-47	01-28-09	022
Order of Continuance and Notice of Hearing CV 2009-47	02-06-09	024
Answer CV 2009-47	02-10-09	026
Motion to Stay Proceedings CV 2009-47	02-10-09	030
Amendment to Post Conviction CV 2009-47	02-20-09	032
Court Minutes CV 2009-47	03-03-09	038
Petition and Affidavit for Post Conviction Relief CV 2009-221	03-24-09	039
Affidavit of Facts in Support of Post-Conviction Petition CV 2009-221	03-24-09	044
Motion and Affidavit in Support for Appointment of Counsel CV 2009-221	03-24-09	065
Order Granting Motion for Appointment of Counsel CV 2009-221	04-01-09	069
Court Minutes CV 2009-221	05-04-09	070

Court Minutes CV 2009-47	06-15-09	071
Motion to Dismiss CV 2009-221	06-24-09	072
Order for Preparation of Transcript CV 2009-47	07-01-09	076
Order for Preparation of Transcript CV 2009-221	07-02-09	078
Court Minutes CV 2009-47 CV 2009-221	07-20-09	080
Court Minutes on Both Post-Conviction Cases CV 2009-47 & CV 2009-221	08-11-09	081
Motion to Dismiss CV 2009-47	08-19-09	082
Court Minutes on Motion to Dismiss/Status Conference CV 2009-47 & CV 2009-221	08-24-09	084
Supplemental Brief in support of Post Conviction Relief CV 2009-47 & CV 2009-221	11-12-09	085
Court Minutes on Motion to dismiss CV 2009-47 & CV 2009-221	11-30-09	088
Court Minutes on State's Motion to dismiss CV 2009-47 & CV 2009-221	12-21-09	089
Order to Disqualify for Cause and Order of Assignment CV 2009-47 & CV 2009-221	01-08-10	090
Order CV 2009-47	01-08-10	093
Order CV 2009-221	01-08-10	096
Notice of Appeal CV 2009-47	01-27-10	099
Notice of Appeal CV 2009-221	01-27-10	102
Motion for Appointment of State Appellate Public Defender CV 2009-47	01-27-10	105
Motion for Appointment of State Appellate Public Defender CV 2009-221	01-27-10	107
Notice and Order appointing State Appellate Public Defender CV 2009-47	01-29-10	109
Notice and Order appointing State Appellate Public Defender CV 2009-221	01-29-10	112
Notice of Appeal Filed CV 2009-47	02-08-10	116

Notice of Appeal Filed CV 2009-221	02-08-10	117
Clerk's Certificate filed CV 2009-47	02-08-10	118
Order Consolidating Appeals CV 2009-47 & CV 2009-221	02-08-10	121
Clerks Certificate of Record		123
Clerks Certificate of service		124

INDEX

	FILED	PAGE
Affidavit of Facts in Support of Post-Conviction Petition CV 2009-221	03-24-09	044
Amendment to Post Conviction CV 2009-47	02-20-09	032
Answer CV 2009-47	02-10-09	026
Clerk's Certificate filed CV 2009-47	02-08-10	118
Clerks Certificate of Record		123
Clerks Certificate of service		124
Court Minutes CV 2009-221	05-04-09	070
Court Minutes CV 2009-47	03-03-09	038
Court Minutes CV 2009-47	06-15-09	071
Court Minutes CV 2009-47 CV 2009-221	07-20-09	080
Court Minutes on Both Post-Conviction Cases CV 2009-47 & CV 2009-221	08-11-09	081
Court Minutes on Motion to dismiss CV 2009-47 & CV 2009-221	11-30-09	088
Court Minutes on Motion to Dismiss/Status Conference CV 2009-47 & CV 2009-221	08-24-09	084
Court Minutes on State's Motion to dismiss CV 2009-47 & CV 2009-221	12-21-09	089
Index		V
Motion and Affidavit for Fee Waiver (Prisoner) CV 2009-47	01-13-09	001
Motion and Affidavit in Support for Appointment of Counsel CV 2009-221	03-24-09	065
Motion and Affidavit in Support for Appointment of Counsel CV 2009-47	01-13-09	009

Motion for Appointment of State Appellate Public Defender CV 2009-47	01-27-10	105
Motion for Appointment of State Appellate Public Defender CV 2009-221	01-27-10	107
Motion to continue CV 2009-47	01-28-09	022
Motion to Dismiss CV 2009-221	06-24-09	072
Motion to Dismiss CV 2009-47	08-19-09	082
Motion to Stay Proceedings CV 2009-47	02-10-09	030
Notice and Order appointing State Appellate Public Defender CV 2009-47	01-29-10	109
Notice and Order appointing State Appellate Public Defender CV 2009-221	01-29-10	112
Notice of Appeal CV 2009-221	01-27-10	102
Notice of Appeal CV 2009-47	01-27-10	099
Notice of Appeal Filed CV 2009-221	02-08-10	117
Notice of Appeal Filed CV 2009-47	02-08-10	116
Order Consolidating Appeals CV 2009-47 & CV 2009-221	02-08-10	121
Order CV 2009-221	01-08-10	096
Order CV 2009-47	01-08-10	093
Order for Preparation of Transcript CV 2009-221	07-02-09	078
Order for Preparation of Transcript CV 2009-47	07-01-09	076
Order Granting Motion for Appointment of Counsel CV 2009-221	04-01-09	069
Order Granting Motion for Appointment of Counsel CV 2009-47	01-21-09	021
Order of Continuance and Notice of Hearing CV 2009-47	02-06-09	024
Order to Disqualify for Cause and Order of Assignment CV 2009-47 & CV 2009-221	01-08-10	090
Petition and Affidavit for Post Conviction Relief CV 2009-221	03-24-09	039

Petition and Affidavit for Post conviction Relief CV 2009-47	01-13-09	014
Register of Actions		VIII
Supplemental Brief in support of Post Conviction Relief CV 2009-47 & CV 2009-221	11-12-09	085
Table of Contents		II
Title Page		I

Case: CV-2009-0000047 Current Judge: Michael R. Crabtree
 Wally Kay Schultz #193761, Plaintiff vs State Of Idaho, Defendant

Wally Kay Schultz #193761, Plaintiff vs State Of Idaho, Defendant

Date	Code	User	Judge
1/13/2009	NCPD	JANET	New Case Filed-Post Conviction Relief R. Barry Wood
		JANET	Filing: 9SPC - Post Conviction Relief Filing Paid by: Schultz, Wally Kay (subject) Receipt number: 0000457 Dated: 1/21/2009 Amount: \$.00 (Cash) For: Schultz, Wally Kay (subject) R. Barry Wood
	PETN	JANET	Petition and Affidavit for Post Conviction Relief R. Barry Wood
	MOTN	JANET	Motion and affidavit in support for appointment of counsel R. Barry Wood
	MOTN	JANET	Motion and affidavit for fee waiver (prisoner) R. Barry Wood
	CHJG	JANET	Change Assigned Judge R. Barry Wood
1/21/2009	ORPD	JANET	Subject: Schultz, Wally Kay Order Appointing Public Defender Court appointed Clayne S. Zollinger Jr. John M. Melanson
1/22/2009	HRSC	JANET	Hearing Scheduled (Status Conference 02/23/2009 09:00 AM) R. Barry Wood
		JANET	Notice Of Hearing R. Barry Wood
	MISC	JANET	Copied file to Clayne Zollinger R. Barry Wood
1/28/2009	MOTN	JANET	Motion to continue R. Barry Wood
2/6/2009	ORDR	JANET	Order to continue and notice of hearing R. Barry Wood
	CONT	JANET	Hearing result for Status Conference held on 02/23/2009 09:00 AM: Continued R. Barry Wood
	HRSC	JANET	Hearing Scheduled (Status Conference 03/02/2009 01:30 PM) R. Barry Wood
2/10/2009	ANSW	JANET	Answer R. Barry Wood
	MOTN	JANET	Motion to stay proceeding R. Barry Wood
2/20/2009	MISC	JANET	(Pro Se) Amendment to Post-Conviction (copied to counsels) R. Barry Wood
3/2/2009	CMIN	JANET	Court Minutes Hearing type: Status Conference Hearing date: 3/2/2009 Time: 4:18 pm Court reporter: Maureen Newton R. Barry Wood
	GRNT	JANET	Hearing result for Status Conference held on 03/02/2009 01:30 PM: Motion Granted State's Motion to Stay Proceedings R. Barry Wood
6/4/2009	HRSC	JANET	Hearing Scheduled (Status Conference 06/15/2009 09:00 AM) R. Barry Wood
		JANET	Notice Of Hearing R. Barry Wood
6/15/2009	CMIN	JANET	Court Minutes Hearing type: Status Conference Hearing date: 6/15/2009 Time: 1:36 pm Court reporter: Linda Ledbetter (4 minutes - printed) John M. Melanson
	INHD	JANET	Hearing result for Status Conference held on 06/15/2009 09:00 AM: Interim Hearing Held R. Barry Wood
	HRSC	JANET	Hearing Scheduled (Status Conference 07/20/2009 01:30 PM) R. Barry Wood
	NOTC	JANET	Notice of hearing R. Barry Wood

VIII
 R. Barry Wood

Wally Kay Schultz #193761, Plaintiff vs State Of Idaho, Defendant

Date	Code	User	Judge
7/1/2009	ORDR	JANET	Order for preparation of Transcript (from change of plea on CR-2005-884)
7/14/2009	CHJG	JANET	Change Assigned Judge
7/20/2009	CMIN	JANET	(5 minutes - printed)
	INHD	JANET	Hearing result for Status Conference held on 07/20/2009 01:30 PM: Interim Hearing Held
7/22/2009	HRSC	JANET	Hearing Scheduled (Motion to Dismiss 08/10/2009 09:00 AM)
		JANET	Notice Of Hearing
8/10/2009	CMIN	JANET	Court Minutes Hearing type: Motion to Dismiss Hearing date: 8/10/2009 Time: 10:17 am Courtroom: District Courtroom-1 Court reporter: Linda Ledbetter Minutes Clerk: Janet Sunderland Tape Number: Party: State of Idaho, Attorney: Lance Stevenson Party: Wally Schultz #193761, Attorney: Clayne Zollinger (2 minutes - printed)
	INHD	JANET	Hearing result for Motion to Dismiss held on 08/10/2009 09:00 AM: Interim Hearing Held
	HRSC	JANET	Hearing Scheduled (Status Conference 08/24/2009 09:00 AM)
8/19/2009	MOTN	JANET	Motion To dismiss
	MOTN	JANET	Motion to continue
	HRSC	JANET	Hearing Scheduled (Status Conference 08/24/2009 01:30 PM) *Motion to Dismiss
8/21/2009	ORDR	JANET	Order of continuance and notice of hearing
8/24/2009	CMIN	JANET	Court Minutes Hearing type: Status Conference Hearing date: 8/24/2009 Time: 4:04 pm Courtroom: District Courtroom-1 Court reporter: Maureen Newton Minutes Clerk: Janet Sunderland Tape Number: Party: State of Idaho, Attorney: JOn Brody Party: Wally Schultz #193761, Attorney: Clayne Zollinger (2 minutes - printed)
	INHD	JANET	Hearing result for Status Conference held on 08/24/2009 01:30 PM: Interim Hearing Held *Motion to Dismiss
11/12/2009	MISC	JANET	Supplemental brief in support of post conviction relief
11/13/2009	HRSC	JANET	Hearing Scheduled (Motion to Dismiss 11/30/2009 01:30 PM)
		JANET	Notice Of Hearing

Wally Kay Schultz #193761, Plaintiff vs State Of Idaho, Defendant

Date	Code	User		Judge
11/24/2009	HRSC	JANET	Hearing Scheduled (Motion to Dismiss 11/30/2009 11:00 AM)	Daniel B. Meehl
	NOTC	JANET	Amended Notice of hearing	John M. Melanson
11/30/2009	CMIN	JANET	Court Minutes Hearing type: Motion to Dismiss Hearing date: 11/30/2009 Time: 11:38 am Courtroom: District Courtroom-1 Court reporter: Minutes Clerk: Janet Sunderland Tape Number: Party: State of Idaho, Attorney: Lance Stevenson Party: Wally Schultz #193761, Attorney: Clayne Zollinger (1 minutes - printed)	Daniel B. Meehl
	INHD	JANET	Hearing result for Motion to Dismiss held on 11/30/2009 11:00 AM: Interim Hearing Held	Daniel B. Meehl
	CHJG	JANET	Change Assigned Judge	Jonathan Brody
	HRSC	JANET	Hearing Scheduled (Motion to Dismiss 12/21/2009 01:30 PM)	Jonathan Brody
12/1/2009	NOTC	JANET	Notice of hearing	Jonathan Brody
12/21/2009	CMIN	JANET	Court Minutes Hearing type: Motion to Dismiss Hearing date: 12/21/2009 Time: 3:22 pm Courtroom: District Courtroom-1 Court reporter: Maureen Newton Petitioner Counsel: Clayne Zollinger Respondent Counsel: Lance Stevenson (7 minutes - printed) Minutes Clerk: Janet Sunderland Tape Number:	Michael R. Crabtree
	GRNT	JANET	Hearing result for Motion to Dismiss held on 12/21/2009 01:30 PM: Motion Granted	Michael R. Crabtree
1/8/2010	ORDR	JANET	Order (granting motion to dismiss)	Michael R. Crabtree
	ORDR	JANET	Order to disqualify for cause and order of reassignment	G. Richard Bevan
	CHJG	JANET	Change Assigned Judge	Michael R. Crabtree
1/27/2010	APSC	JANET	Appealed To The Supreme Court - Notice of appeal	Michael R. Crabtree
	MOTN	JANET	Motion for appointment of state appellate public defender	Michael R. Crabtree
1/29/2010	ORDR	JANET	Notice and Order appointing State Appellate Public Defender in direct appeal	Michael R. Crabtree
2/8/2010	ORDR	SANTOS	SC document Order Consolidating Appeals	Michael R. Crabtree
	NOTC	SANTOS	SC Document Notice of Appeal Filed	Michael R. Crabtree
2/11/2010	MISC	SANTOS	SC document Clerk's Certificate Filed	Michael R. Crabtree

Date: 2/25/2010

Fifth Judicial District Court - Minidoka County

User: SANTOS

Time: 03:37 PM

ROA Report

Page 4 of 4

Case: CV-2009-0000047 Current Judge: Michael R. Crabtree

Wally Kay Schultz #193761, Plaintiff vs State Of Idaho, Defendant

Wally Kay Schultz #193761, Plaintiff vs State Of Idaho, Defendant

Date	Code	User	Judge
2/23/2010	TRAN	SANTOS	Transcript Filed for Hearing held 12/31/09 by Maureen Newton

Wally Kay Schultz #193761, Plaintiff vs State Of Idaho, Defendant

Date	Code	User	Judge
3/24/2009	NPCP	JANET	New Case Filed-Post Conviction Relief
		JANET	Filing: 9SPC - Post Conviction Relief Filing Paid by: Schultz, Wally Kay (subject) Receipt number: 0002259 Dated: 3/25/2009 Amount: \$.00 (Cash) For: Schultz, Wally Kay (subject)
	PETN	JANET	Petition and Affidavit for Post-Conviction Relief
	AFFD	JANET	Affidavit of facts in support of post-conviction petition
	MOTN	JANET	Motion and affidavit in support for appointment of counsel
4/1/2009	ORPD	JANET	Subject: Schultz #193761, Wally Kay Order Appointing Public Defender Court appointed Clayne S. Zollinger Jr.
	HRSC	JANET	Hearing Scheduled (Status Conference 05/04/2009 01:30 PM)
		JANET	Notice Of Hearing
4/2/2009	MISC	JANET	File copied to Zollinger
4/9/2009	HRSC	JANET	Hearing Scheduled (Status Conference 05/04/2009 09:00 AM)
		JANET	Notice Of Hearing
5/4/2009	CMIN	JANET	Court Minutes Hearing type: Status Conference Hearing date: 5/4/2009 Time: 11:25 am Court reporter: Linda Ledbetter (2 minutes - printed)
	INHD	JANET	Hearing result for Status Conference held on 05/04/2009 09:00 AM: Interim Hearing Held
	HRSC	JANET	Hearing Scheduled (Status Conference 07/13/2009 09:00 AM)
		JANET	Notice Of Hearing
6/15/2009	CMIN	JANET	Court Minutes Hearing type: Status Conference Hearing date: 6/15/2009 Time: 01:36 PM Court reporter: Linda Ledbetter
6/24/2009	MOTN	JANET	Motion to dismiss
6/30/2009	HRSC	JANET	Amended Hearing Scheduled (Status Conference 07/20/2009 01:30 PM)
		JANET	Amended Notice Of Hearing
7/2/2009	ORDR	JANET	Order for preparation of transcript
7/20/2009	CMIN	JANET	Court Minutes Hearing type: Status Conference Hearing date: 7/20/2009 Time: 2:37 pm Court reporter: Maureen Newton Minutes Clerk: Janet Sunderland Party: State of Idaho, Attorney: Jonathon Brody Party: Wally Schultz #193761, Attorney: Clayne Zollinger (10 minutes - printed)
	INHD	JANET	Hearing result for Status Conference held on 07/20/2009 01:30 PM: Interim Hearing Held

Wally Kay Schultz #193761, Plaintiff vs State Of Idaho, Defendant

Date	Code	User	Judge
7/22/2009	CMIN	JANET	Court Minutes Hearing type: Status Conference Hearing date: 7/20/2009 Time: 12:35 pm Court reporter: Maureen Newton Minutes Clerk: Janet Sunderland John M. Melanson
	CMIN	JANET	Court Minutes Hearing type: Status Conference Hearing date: 7/20/2009 Time: 12:39 pm Court reporter: Maureen Newton Minutes Clerk: Janet Sunderland John M. Melanson
8/7/2009	HRSC	JANET	Hearing Scheduled (Motion to Dismiss 08/10/2009 09:00 AM) R. Barry Wood
8/10/2009	CMIN	JANET	Court Minutes Hearing type: Motion to Dismiss Hearing date: 8/10/2009 (1 minute - printed) Time: 10:36 am Courtroom: District Courtroom-1 Court reporter: Linda Ledbetter Minutes Clerk: Janet Sunderland Tape Number: R. Barry Wood
	INHD	JANET	Hearing result for Motion to Dismiss held on 08/10/2009 09:00 AM: Interim Hearing Held R. Barry Wood
	HRSC	JANET	Hearing Scheduled (Status Conference 08/24/2009 09:00 AM) John M. Melanson
8/19/2009	MOTN	JANET	Motion to continue John M. Melanson
	HRSC	JANET	Hearing Scheduled (Status Conference 08/24/2009 01:30 PM) John M. Melanson
8/24/2009	CMIN	JANET	Court Minutes Hearing type: Motion to Dismiss/Status Conferenc Hearing date: 08/24/2009 Time: 4:05 pm Courtroom: Court reporter: Maureen Newton Minutes Clerk: Janet Sunderland Tape Number: Clayne Zollinger for petitioner Jon Brody for Defendant (2 minutes - printed) John M. Melanson
	INHD	JANET	Hearing result for Status Conference held on 08/24/2009 01:30 PM: Interim Hearing Held John M. Melanson
11/12/2009	MISC	JANET	Supplemental Brief in support of Post-Conviction Relief John M. Melanson
11/13/2009	HRSC	JANET	Hearing Scheduled (Motion to Dismiss 11/30/2009 01:30 PM) Daniel B. Meehl
		JANET	Notice Of Trial Daniel B. Meehl
11/24/2009	HRSC	JANET	Amended Hearing Scheduled (Motion to Dismiss 11/30/2009 11:00 AM) Daniel B. Meehl
	NOTC	JANET	Amended notice of hearing Daniel B. Meehl

Case: CV-2009-0000221 Current Judge: Michael R. Crabtree
 Wally Kay Schultz #193761, Plaintiff vs State Of Idaho, Defendant

Wally Kay Schultz #193761, Plaintiff vs State Of Idaho, Defendant

Date	Code	User	Judge
11/30/2009	CMIN	JANET	Court Minutes Hearing type: Motion to Dismiss Hearing date: 11/30/2009 Time: 11:28 am Courtroom: District Courtroom-1 Court reporter: Minutes Clerk: Janet Sunderland Tape Number: Party: State of Idaho, Attorney: Lance Stevenson Party: Wally Schultz #193761, Attorney: Clayne Zollinger (1 minutes - printed)
	INHD	JANET	Hearing result for Motion to Dismiss held on 11/30/2009 11:00 AM: Interim Hearing Held
	CHJG	JANET	Change Assigned Judge
	HRSC	JANET	Hearing Scheduled (Motion to Dismiss 12/21/2009 09:00 AM)
12/1/2009	NOTC	JANET	Notice of hearing
12/21/2009	CMIN	JANET	Court Minutes Hearing type: Motion to Dismiss Hearing date: 12/21/2009 Time: 3:21 pm Courtroom: District Courtroom-1 Court reporter: Minutes Clerk: Janet Sunderland Tape Number: Party: State of Idaho, Attorney: Lance Stevenson Party: Wally Schultz #193761, Attorney: Clayne Zollinger (7 minutes - printed)
	GRNT	JANET	Hearing result for Motion to Dismiss held on 12/21/2009 09:00 AM: Motion Granted
1/8/2010	ORDR	JANET	Order (granting Motion to dismiss)
	ORDR	JANET	Order to disqualify for cause and order of reassignment
	CHJG	JANET	Change Assigned Judge
1/27/2010	APSC	JANET	Appealed To The Supreme Court - Notice of appeal
	MOTN	JANET	Motion for appointment of state appellate public defender
1/29/2010	ORDR	JANET	Notice and Order appointing state appellate public defender in direct appeal
2/8/2010	ORDR	SANTOS	SC Document Order Consolidating Appeals with CV 2009-47
	NOTC	SANTOS	SC Document Notice of Appeal filed
2/23/2010	TRAN	SANTOS	Transcript Filed for Hearing Held 12/21/09 by Maureen Newton

SCANNED

1-22-09

FILED-U.S. DIST. COURT
CASE #

Inmate name Wally Schultz
IDOC No. 19376
Address Box 51, IMSI-E-134
BOISE, ID 83707

2009 JAN 13 PM 4:49

DUNN, J. CLERK
DEPUTY

Petitioner

IN THE DISTRICT COURT OF THE Fifth JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF Minidoka

Wally Ray Schultz

Plaintiff-Petitioner,

vs.

State of Idaho

Defendant-Respondent.

Case No. CV-2009-47

**MOTION AND AFFIDAVIT
FOR FEE WAIVER (PRISONER)**

IMPORTANT NOTICE: Idaho Code § 31-3220A(2)(c) requires that you serve upon counsel for the county sheriff or the department of correction, whichever may apply, a copy of this motion and affidavit and any other documents filed in connection with your request for waiver of fees. You must file proof of such service with the court when you file this affidavit.

STATE OF IDAHO)
County of Minidoka) ss

☒ Petitioner ☐ Respondent asks to start or defend this case without paying fees, and

swears under oath:

1. This is an action for (type of case) Possession of a controlled substance.
2. I am unable to pay the court costs. I verify that the statements made in this affidavit are true and correct. I understand that a false statement in this affidavit is perjury and I could

MOTION AND AFFIDAVIT FOR FEE WAIVER (PRISONER)

PAGE 1

Revised: 10/13/05

be sent to prison for one (1) to fourteen (14) years. The waiver of payment does not prevent the court from later ordering me to pay costs and fees.

3. I have attached to this affidavit a current statement of my inmate account, certified by a custodian of inmate accounts, that reflects the activity of the account over my period of incarceration or for the last twelve (12) months, whichever is less. I understand that I am not an indigent prisoner, and will be required to pay all or part of the court fees, if I have had any funds in my inmate account during the last twelve (1) months or the period of my incarceration, whichever is less.

Do not leave any items blank. If any item does not apply, write "N/A". Attach additional pages if more space is needed for any response.

IDENTIFICATION AND RESIDENCE:

Name: Wally Ray Schultz Other Names I have used: None

Address: I.S.C.I. Po Box 14-10-B-27-A

How long at that Address: Six months Phone: N/A

Date and place of birth: 3-7-61- Berkeley Id.

Education completed (years): 12

Marital Status: ☒ Single ☐ Married ☐ Divorced ☐ Widowed ☐ Separated

ASSETS:

List all real property (land and buildings) owned or being purchased by you.

Address	City	State	Legal Description	Value	Your Equity
<u>N/A</u>					

MOTION AND AFFIDAVIT FOR FEE WAIVER (PRISONER)

PAGE 2

Revised: 10/13/05

Vehicle Payment(s): N-A

Credit Cards: (list each account number) N-A

Loans: (name of lender and reason for loan)

N-A

Electricity/Natural Gas: N-A

Water/Sewer/Trash N-A

Phone: N-A

Groceries: N-A

Clothing: N-A

Auto Fuel: N-A

Auto Maintenance: N-A

Cosmetics/Haircuts/Salons: N-A

Entertainment/Books/Magazines: N-A

Home Insurance: N-A

Auto Insurance: N-A

Life Insurance: N-A

Medical Insurance: N-A

Medical Expense: N-A

Other: _____

MISCELLANEOUS:

How much can you borrow? None From Whom? _____

MOTION AND AFFIDAVIT FOR FEE WAIVER (PRISONER)

PAGE 4

Revised: 10/13/05

List all other property owned by you and state its value.

Description (provide description for each item)

Value

Cash:

Notes and Receivables:

Vehicles:

Bank/Credit Union/Savings/Checking Accounts:

Stocks/Bonds/Investments/Certificates of Deposit:

Trust Funds:

Retirement Accounts/IRAs/401(k)'s:

Cash Value Insurance:

Motorcycles/Boats/RV's/Snowmobiles:

Furniture/Appliances:

Jewelry/antiques/Collectibles:

TV's/Stereos/Computers/Electronics:

Tools/Equipment:

Sporting Goods/Guns:

Horses/Livestock/Tack:

Other (describe)

EXPENSES: List all of your monthly expenses.

Expense

**Average
Monthly Payment**

Rent/House Payment:

MOTION AND AFFIDAVIT FOR FEE WAIVER (PRISONER)

PAGE 3

Revised: 10/13/05

When did you file your last income tax return? 2006 Amount of Refund? 90?

PERSONAL REFERENCES (These persons must be able to verify information provided):

Name	Address	Phone	Years Known
Samie Bronson	Burley Id 559S 480 E	677-2735	34
Pet Burns	401-16th Heyburn	678-9119	47

1-9-9
Date

[Signature]
Signature

WALLY SCHULTZ
Typed/Printed Name

SUBSCRIBED AND SWORN or AFFIRMED TO before me this 9 day of

JANUARY, 2009.



[Signature]
Notary Public for Idaho
My Commission Expires: 11/06/13

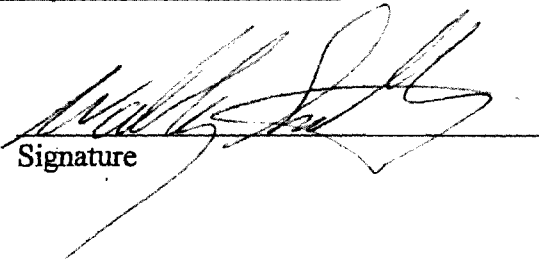
CERTIFICATE OF MAILING

I HEREBY CERTIFY That on the 9 day of JANUARY, 2009, I
Mailed a true and correct copy of the MOTION AND AFFIDAVIT FOR FEE WAIVER
(PRISONER) via prison mail system to the US Mail system to:

MINIDUKA County Prosecuting Attorney

P.O. Box 336

RUPERT, ID 83350


Signature

= IDOC TRUST ===== OFFENDER BANK BALANCES ===== 09/09/2008 =

Doc No: 19376 Name: SCHULTZ, WALLY KAY
Account: CHK Status: ACTIVE

ISCI/UNT10 PRES FACIL
TIER-B CELL-27

Transaction Dates: 09/01/2007-09/09/2008

Beginning Balance 17.41	Total Charges 367.99	Total Payments 364.98	Current Balance 14.40
-------------------------------	----------------------------	-----------------------------	-----------------------------

===== TRANSACTIONS =====

Date	Batch	Description	Ref Doc	Amount	Balance
02/22/2008	HQ0407707-004	013-RCPT RDU	RCPT/RDU	4.85	22.26
02/26/2008	II0408018-017	099-COMM SPL		3.12DB	19.14
03/05/2008	HQ0408935-005	011-RCPT MO/CC		20.00	39.14
03/05/2008	HQ0408935-011	011-RCPT MO/CC		40.00	79.14
03/10/2008	II0409615-028	099-COMM SPL		1.86DB	77.28
03/11/2008	II0409707-013	099-COMM SPL		16.14DB	61.14
03/17/2008	II0410387-031	099-COMM SPL		1.86DB	59.28
03/18/2008	II0410523-016	099-COMM SPL		14.57DB	44.71
03/25/2008	II0411307-020	099-COMM SPL		6.23DB	38.48
04/01/2008	II0412015-016	099-COMM SPL		18.84DB	19.64
04/02/2008	II0412360-005	100-CR INM CMM		1.86	21.50
04/08/2008	II0412913-024	099-COMM SPL		12.71DB	8.79
04/09/2008	II0413120-018	072-METER MAIL	142634	1.99DB	6.80
04/16/2008	IC0413887-001	099-COMM SPL		5.87DB	0.93
04/16/2008	IC0413948-001	100-CR INM CMM		5.87	6.80
04/22/2008	HQ0414503-021	011-RCPT MO/CC	9216	100.00	106.80
04/29/2008	II0415304-024	099-COMM SPL		78.32DB	28.48
05/05/2008	II0416018-039	099-COMM SPL		16.39DB	12.09
05/06/2008	II0416151-020	099-COMM SPL		4.77DB	7.32
05/13/2008	II0417128-003	100-CR INM CMM		36.73	44.05
05/20/2008	II0417713-019	099-COMM SPL		20.03DB	24.02
05/23/2008	II0418287-014	211-FOOD SVC	MAY 2008	5.76	29.78
05/27/2008	II0418365-052	099-COMM SPL		6.99DB	22.79
05/30/2008	II0418973-003	211-FOOD SVC	MAY BONUS	5.00	27.79
05/30/2008	HQ0419045-009	011-RCPT MO/CC	RCPT/MO	50.00	77.79
06/02/2008	II0419107-033	099-COMM SPL		18.37DB	59.42
06/09/2008	II0420107-037	099-COMM SPL		15.73DB	43.69
06/10/2008	II0420237-020	099-COMM SPL		40.13DB	3.56
06/16/2008	II0421185-036	099-COMM SPL		1.29DB	2.27
06/16/2008	II0421254-085	211-FOOD SVC	JUNE PAY	8.91	11.18
06/23/2008	II0421930-033	099-COMM SPL		6.91DB	4.27
06/27/2008	II0422532-006	072-METER MAIL	150876	1.51DB	2.76
06/30/2008	II0422625-045	099-COMM SPL		2.66DB	0.10
07/08/2008	HQ0423668-016	011-RCPT MO/CC	RCPT/MO	20.00	20.10
07/14/2008	II0424253-034	099-COMM SPL		14.58DB	5.52
07/22/2008	II0425147-014	099-COMM SPL		3.40DB	2.12
07/24/2008	II0425512-015	211-FOOD SVC	JULY 2008	36.60	38.72
07/28/2008	II0425740-041	099-COMM SPL		24.20DB	14.52
08/04/2008	II0426662-005	072-METER MAIL	150880	0.59DB	13.93

= IDOC TRUST ===== OFFENDER BANK BALANCES ===== 09/09/2008 =

Doc No: 19376 Name: SCHULTZ, WALLY KAY
Account: CHK Status: ACTIVE

ISCI/UNT10 PRES FACIL
TIER-B CELL-27

Transaction Dates: 09/01/2007-09/09/2008

	Beginning Balance	Total Charges	Total Payments	Current Balance
	17.41	367.99	364.98	14.40

===== TRANSACTIONS =====

Date	Batch	Description	Ref Doc	Amount	Balance
08/18/2008	II0428403-033	099-COMM SPL		10.05DB	3.88
08/22/2008	II0429058-031	072-METER MAIL	150878	1.17DB	2.71
08/25/2008	II0429182-034	099-COMM SPL		1.75DB	0.96
08/27/2008	II0429623-017	072-METER MAIL	150879	0.42DB	0.54
09/02/2008	HQ0430068-016	011-RCPT MO/CC	RCPT/MO	20.00	20.54
09/05/2008	II0430811-116	223-IMF PAYROL	AUGUST PAY	9.40	29.94
09/08/2008	II0430956-030	099-COMM SPL		15.54DB	14.40

STATE OF IDAHO

Idaho Department of Correction

I hereby certify that the foregoing is a full, true, and
correct copy of an instrument as the same now remains
on file and of record in my office.

WITNESS my hand hereto affixed this 9

day of September A.D., 2008

Janece R Bonman

SCANNED

1-22-09

FILED-DIST. COURT
CASE #

Inmate name

IDOC No.

Address

2009 JAN 13 PM 4:49

DOANE
DEPUTY

Petitioner

IN THE DISTRICT COURT OF THE Fifth JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF Minidoka

Wally Kay Schultz

Petitioner,

vs.

State of Idaho

Respondent.

Case No. CX-2009-47

**MOTION AND AFFIDAVIT IN
SUPPORT FOR
APPOINTMENT OF
COUNSEL**

COMES NOW, Wally Kay Schultz, Petitioner in the above
entitled matter and moves this Honorable Court to grant Petitioner's Motion for Appointment of
Counsel for the reasons more fully set forth herein and in the Affidavit in Support of Motion for
Appointment of Counsel.

1. Petitioner is currently incarcerated within the Idaho Department of Corrections
under the direct care, custody and control of Warden PAT. HENRY
of the IDARD MAXIMUM SECURITY INSTITUTION

2. The issues to be presented in this case may become to complex for the Petitioner
to properly pursue. Petitioner lacks the knowledge and skill needed to represent him/herself.

3. Petitioner/Respondent required assistance completing these pleadings, as he/she
was unable to do it him/herself.

MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL - 1

Revised: 10/13/05

4. Other: _____

DATED this ____ day of JANUARY, 2009.

Petitioner

AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL

STATE OF IDAHO)
) ss
County of ADA)

_____, after first being duly sworn upon his/her oath, deposes
and says as follows:

1. I am the Affiant in the above-entitled case;
2. I am currently residing at the IDAHO MAXIMUM SECURITY INSTITUTION
under the care, custody and control of Warden PAT HENRY;
3. I am indigent and do not have any funds to hire private counsel;
4. I am without bank accounts, stocks, bonds, real estate or any other form of real
property;
5. I am unable to provide any other form of security;
6. I am untrained in the law;
7. If I am forced to proceed without counsel being appointed I will be unfairly
handicapped in competing with trained and competent counsel of the State;

Further your affiant sayeth naught.

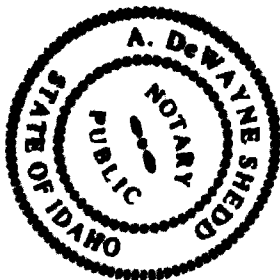
WHEREFORE, Petitioner respectfully prays that this Honorable Court issue
it's Order granting Petitioner's Motion for Appointment of Counsel to represent his/her interest,
or in the alternative grant any such relief to which it may appear the Petitioner is entitled to.

DATED This 9 day of JANUARY, 20 09.

Wally L. L. L.
Petitioner

SUBSCRIBED AND SWORN AND AFFIRMED to before me this 9 day
of JANUARY, 20 09.

(SEAL)



A. DeWayne Shedd
Notary Public for Idaho
Commission expires: 11/06/13


CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 9 day of JANUARY, 2009, I mailed a copy of this MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL for the purposes of filing with the court and of mailing a true and correct copy via prison mail system for processing to the U.S. mail system to:

MIN IDOKA County Prosecuting Attorney

P.O. Box 368

RUPERT, ID 83350


Petitioner

SCANNED

1-22-09

FILED-DIST. COURT
CASE #

Inmate Name Wally Schultz
IDOC No. 193761
Address ISIC-PO
Box 17 Boise

2009 JAN 13 PM 4:49

DUANE J. CLARK
DEPUTY

Petitioner

IN THE DISTRICT COURT OF THE Fifth JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF Minidoka

WALLY SCHULTZ,)

Petitioner,)

vs.)

STATE OF IDAHO,)

Respondent.)

Case No. CV-2009-47

**PETITION AND AFFIDAVIT
FOR POST CONVICTION
RELIEF**

The Petitioner alleges:

1. Place of detention if in custody: IDAHO MAXIMUM SECURITY INSTITUTION
2. Name and location of the Court which imposed judgement/sentence: DISTRICT COURT
OF THE FIFTH JUDICIAL DISTRICT, IN AND FOR THE COUNTY OF
MINIDOKA
3. The case number and the offense or offenses for which sentence was imposed:
 - (a) Case Number: 2005 - CR 884
 - (b) Offense Convicted: POSSESSION OF CONTROLLED SUBSTANCE
4. The date upon which sentence was imposed and the terms of sentence:
 - a. Date of Sentence: DECEMBER 12, 2005
 - b. Terms of Sentence: 3 plus 4 for a total of 7

5. Check whether a finding of guilty was made after a plea:

☒ Of guilty

☐ Of not guilty

6. Did you appeal from the judgment of conviction or the imposition of sentence?

☒ Yes ☐ No

If so, what was the Docket Number of the Appeal? 33255

7. State concisely all the grounds on which you base your application for post conviction relief: (Use additional sheets if necessary.)

(a) INEFFECTIVE ASSISTANCE OF COUNSEL

(b) PROSECUTORIAL MISCONDUCT

(c) ANY AND ALL OTHER CREDIBLE ISSUES
DISCOVERED BY TRAINED COUNSEL

8. Prior to this petition, have you filed with respect to this conviction:

a. Petitions in State or Federal Court for habeas corpus? NONE

b. Any other petitions, motions, or applications in any other court? NONE

c. If you answered yes to a or b above, state the name and court in which each petition, motion or application was filed:

NONE

9. If your application is based upon the failure of counsel to adequately represent you, state concisely *and in detail* what counsel failed to do in representing your interests:

(a) FAILURE TO CONDUCT PROPER INVESTIGATION AS REQUESTED BY DEFENDANT.

(b) FAILURE TO FILE MOTION FOR "FRANKS HEARING" PER DEFENDANT'S REQUEST.

(c) FAILURE TO REQUEST "CONCURRENT SENTENCE" UPON COMPLETION OF "RIDER"

10. Are you seeking leave to proceed in forma pauperis, that is, requesting the proceeding be at county expense? (If your answer is "yes", you must fill out a Motion to Proceed in Forma Pauperis and supporting affidavit.)

☒ Yes [] No

11. Are you requesting the appointment of counsel to represent you in this case? (If your answer is "yes", you must fill out a Motion for the Appointment of Counsel and supporting affidavit, as well as a Motion to Proceed In Forma Pauperis and supporting affidavit.)

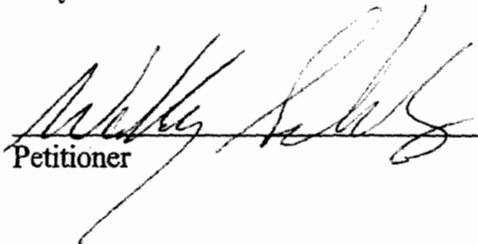
☒ Yes [] No

12. State specifically the relief you seek:

1) Petitioner wishes to withdraw guilty plea, and
proceed to a Franks hearing on a motion to
suppress.

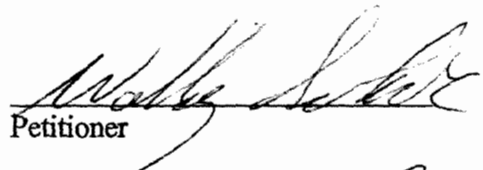
13. This Petition may be accompanied by affidavits in support of the petition. (Forms for this are available.)

DATED this 9 day of JANUARY, 2009.


Petitioner

STATE OF IDAHO)
) ss
County of ADA)

Wally Schultz, being sworn, deposes and says that the party is the
Petitioner in the above-entitled appeal and that all statements in this PETITION FOR POST
CONVICTION RELIEF are true and correct to the best of his or her knowledge and belief.

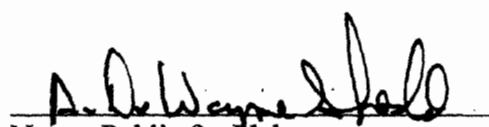

Petitioner

SUBSCRIBED AND SWORN and AFFIRMED to before me this 9 day of

JANUARY, 2009.

(SEAL)




Notary Public for Idaho

Commission expires: 11/06/13

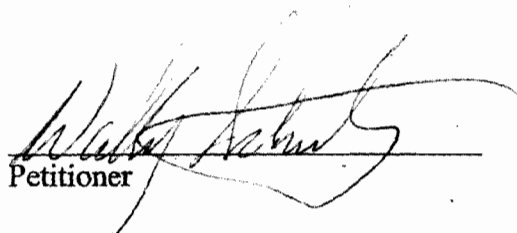
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the _____ day of JANUARY, 2009, I mailed a copy of this PETITION FOR POST CONVICTION RELIEF for the purposes of filing with the court and of mailing a true and correct copy via prison mail system to the U.S. mail system to:

MINIDUKA County Prosecuting Attorney

P.O. BOX 368

RUPELT, ID 83350



Petitioner

AFFIDAVIT OF FACTS IN SUPPORT OF POST-CONVICTION PETITION

STATE OF IDAHO)
) ss
COUNTY OF ADA)

WALLY SCHULTZ, being first duly sworn on oath, deposes and says:

DESPITE NUMEROUS REQUESTS ATTORNEY
DENNIS BYINGTON FAILED TO FILE FOR A
FRANKS HEARING, MOTION TO SUPPRESS, AND
FULL DISCOVERY, THESE FAILURES FORCED ME
TO FILE PRO SE MOTIONS, NONE OF WHICH
WERE HEARD.

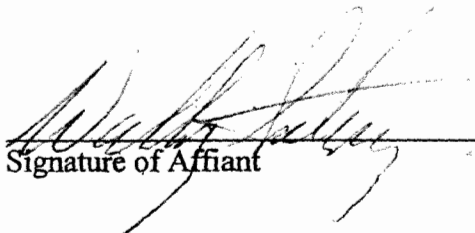
THE DISTRICT COURT APPOINTED DAVID PENA
CONFLICT PUBLIC DEFENDER ON NOVEMBER 18, 2005,
I WAS ADVISED THAT HE "DIDN'T HAVE TIME"
TO PREPARE FOR A SUPPRESSION HEARING, THERE-
FORE I NEEDED TO WAIVE MY RIGHT TO A
SPEEDY TRIAL, EVIDENCED BY WAIVER OF
NOVEMBER 18, 2005.

ON DECEMBER 12, 2005 ATTORNEY PENA ADVISED
ME I WOULD RECEIVE CONCURRENT SENTENCES,
AS PER AN PLEA AGREEMENT WORKED OUT BETWEEN
HIM AND PROSECUTOR JASON WALKER, AND READ IN
INTO THE COURT RECORD BY DISTRICT JUDGE

M. MELANSON.

THE COURT SUBSEQUENTLY SENTENCED ME TO A UNIFIED SENTENCE OF 7 YEARS, (CONSECUTIVE), IN DIRECT CONTRAVENTION OF THE AGREED UPON PLEA AGREEMENT ENTERED INTO THE RECORD.

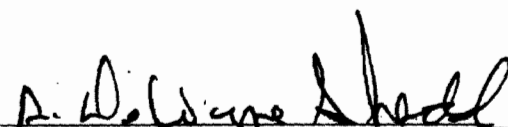
Further your affiant sayeth not.


Signature of Affiant

SUBSCRIBED AND SWORN AND AFFIRMED TO before me this 9 day of

JANUARY, 2009.




Notary Public for Idaho
My Commission Expires: 11/06/13

SCANNED

1-22-09

Inmate name Wally Schultz
IDOC No. 19376
Address Box 51, IMSI - E - 13A
BOISE, ID 83707

FILED-DISTRICT COURT
CASE # _____

2009 JAN 21 PM 3:57

DUANE S. CLARK
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

WALLY SCHULTZ,)
)
Petitioner,)
)
vs.)
)
STATE OF IDAHO,)
)
Respondent.)

Case No. CV-2009-47

**ORDER GRANTING
MOTION FOR
APPOINTMENT
OF COUNSEL**

IT IS HEARBY ORDERED that the Petitioner's Motion for Appointment of Counsel is granted and Clayne Zollinger (attorney's name), a duly licensed attorney in the State of Idaho, is hereby appointed to represent said defendant in all proceedings involving the post conviction petition.

DATED this 21 day of JANUARY, 2009.

John M. Melanson
District Judge

SCANNED

1-29-09

Clayne S. Zollinger, Jr. (ISB #4172)

Attorney-at-Law

P.O. Box 210

Rupert, ID 83350

Office: (208) 436-1122

Fax: (208) 436-7837

Attorney for: Defendant

FILED-DISTRICT COURT
CASE #

2009 JAN 28 PM 3:11

DUANE S. CLERK
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF MINIDOKA

WALLY KAY SCHULTZ,

Plaintiff,

vs.

STATE OF IDAHO,

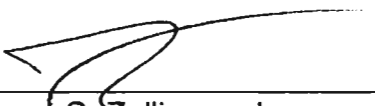
Defendant.

Case No. CV-2009-0047

MOTION TO CONTINUE

COMES NOW Clayne S. Zollinger, Jr., counsel for the Plaintiff, Wally Kay Schultz, and hereby moves the Court to continue the Status Conference scheduled for Monday, the 23rd day of February, 2009 at 09:00 a.m. The basis for this motion is that counsel for the defendant is previously scheduled to be in Boise at a CLE.

DATED this 27th day of January, 2009.


Clayne S. Zollinger, Jr.
Attorney for Defendant

CERTIFICATE OF MAILING

I hereby certify that on this _____ day of January, 2009, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

County Prosecutor
PO Box 368
Rupert, ID 83350

_____ By depositing copies of the same in the United States mail, postage prepaid, at the post office in Rupert, ID.

_____ By hand delivering copies of the same to the office of the attorney(s) at the address(es) stated above.

_____ By placing copies in the attorney's baskets at the Courthouse in Rupert, Idaho.

_____ By telecopying copies of the same to said attorney(s) at the telecopied number(s) (208) _____, and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office in Rupert, Idaho.

BY: _____
Clayne S. Zollinger, Jr.

SCANNED

FILED-DISTRICT COURT
CASE # _____

Clayne S. Zollinger, Jr. (ISB #4172)

Attorney-at-Law

P.O. Box 210

Rupert, ID 83350

Office: (208) 436-1122

Fax: (208) 436-7837

2009 FEB -6 PM 4:26

DUANE SMITH, CLERK
DEPUTY

Attorney for Defendant

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

WALLY KAY SCHULTZ,

Plaintiff,

vs.

STATE OF IDAHO,

Defendant.

Case No. CV-2009-0047

**ORDER OF CONTINUANCE
AND NOTICE OF HEARING**

THIS MATTER, having come before the Court, on counsel for the Defendant's Motion to Continue, in good cause appearing;

IT IS HEREBY ORDERED that the Status Conference previously set for the above entitled matter is hereby continued until Monday, the 2 day of March, 2009 at 1:30 o'clock P.m.

on condition upon the State having no objection

DATED this 6 day of January, 2009.

Feb

B. Wolf
Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on this 8 day of January, 2009, I served a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Clayne S. Zollinger, Jr.
PO Box 210
Rupert, ID 83350

County Prosecutor
PO Box 368
Rupert, ID 83350

☐ By depositing copies of the same in the United States mail, postage prepaid, at the United States Post Office.

☐ By hand delivering copies of the same to the office of the attorney(s) at the address(es) stated above.

☒ By placing copies in the attorney's baskets at the Courthouse in Rupert, Idaho.

DUANE SMITH, Clerk of Court

BY: 
Deputy

ORIGINAL

SCANNED

FILED-DISTRICT COURT
CASE # _____

2009 FEB 10 PM 3:26

DUANE S. STANT CLERK
DEPUTY

**MINIDOKA COUNTY PROSECUTING ATTORNEY
STATE OF IDAHO**

LANCE D. STEVENSON, *Prosecuting Attorney (ISB#7733)*
ALAN GOODMAN, *Deputy Prosecuting Attorney (ISB#2778)*
JONATHAN P. BRODY, *Deputy Prosecuting Attorney (ISB#4960)*
MELISSA K. ASTON, *Deputy Prosecuting Attorney (ISB#7377)*
715 G. Street, P. O. Box 368
Rupert, ID 83350
Office: (208)436-7187
Facsimile: (208) 436-3177

ATTORNEYS FOR STATE OF IDAHO

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA
MAGISTRATE COURT**

WALLY K. SCHULTZ,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

) Case No. CV-2009-47

) ANSWER

COMES NOW, the State of Idaho, by and through Jonathan P. Brody,

Minidoka County Deputy Prosecuting Attorney, and does hereby answer

Petitioner's ("Schultz") petition for post-conviction relief in the above-entitled
action as follows:

I.

**GENERAL RESPONSES TO WALLY K. SCHULTZ'S POST-CONVICTION
ALLEGATIONS**

ANSWER - 1

All allegations made by Wally K. Schultz are denied by the state unless specifically admitted herein.

II.
SPECIFIC ANSWERS TO WALLY K. SCHULTZ'S POST-CONVICTION
ALLEGATIONS

- 1. Answering paragraphs 1, 2, 3, 4, 5, and 6 of Wally K. Schultz's Petition for Post-Conviction Relief, Respondent admits the allegations contained therein.**
- 2. Answering paragraph seven, the state denies the allegations contained therein, including all subparts.**
- 3. Answering paragraph eight (8), the state is without sufficient information to admit or deny.**
- 4. Answering paragraph nine (9), the state denies the allegations contained therein, including all subparts.**
- 5. Paragraphs 10-13, including all subparts paragraphs 10-13, do not contain factual assertions capable of being admitted or denial.**

FIRST AFFIRMATIVE DEFENSE

Wally K. Schultz's petition fails to state any grounds upon which relief can be granted. Idaho Code § 19-4901(a); I.R.C.P. 12(b)(6).

SECOND AFFIRMATIVE DEFENSE

To the extent Wally K. Schultz's claims should have been raised on direct appeal, the claims are procedurally defaulted. Idaho Code § 19-4901(b).

THIRD AFFIRMATIVE DEFENSE

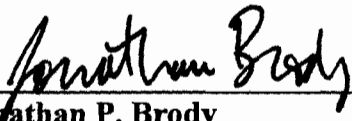
Wally K. Schultz's Petition for Post-Conviction Relief contains bare and conclusory

allegations unsubstantiated by affidavits, records, or other admissible evidence, and therefore fails to raise a genuine issue of material fact. Idaho Code §§ 19-4902(a), 19-4903, and 19-4906.

WHEREFORE, Respondent prays for relief as follows:

- a) That Wally K. Schultz's claims for post-conviction relief be denied;
- b) That Wally K. Schultz's claims for post-conviction relief be dismissed;
- c) For such other and further relief as the court deems necessary in the case.

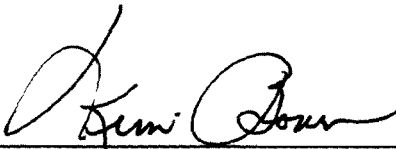
DATED this 9th day of February 2009.


Jonathan P. Brody
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 10th day of February, 2009, I caused
a true and correct copy of the foregoing ANSWER to be placed in the United States
mail, postage prepaid, addressed to:

Wally K. Schultz #14376
I.M.S.I. E-13A
P. O. Box 51
Boise, ID 83707



Kim Bourn

ORIGINAL

SCANNED

FILED-DISTRICT COURT
CASE # _____

2009 FEB 10 PM 3:26

DUANE SMITH, CLERK
DEPUTY

**MINIDOKA COUNTY PROSECUTING ATTORNEY
STATE OF IDAHO**

LANCE D. STEVENSON, *Prosecuting Attorney (ISB#7733)*
ALAN GOODMAN, *Deputy Prosecuting Attorney (ISB#2778)*
JONATHAN P. BRODY, *Deputy Prosecuting Attorney (ISB#4960)*
MELISSA K. ASTON, *Deputy Prosecuting Attorney (ISB#4960)*
715 G. Street, P. O. Box 368
Rupert, ID 83350
Office: (208)436-7187
Facsimile: (208) 436-3177

ATTORNEYS FOR THE STATE OF IDAHO

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

WALLY K. SCHULTZ,

Petitioner,

vs.

STATE OF IDAHO,

Defendant.

)
)
)
)
)
)
)
)
)
)

Case No. CV-2009-47

**MOTION TO STAY
PROCEEDINGS**

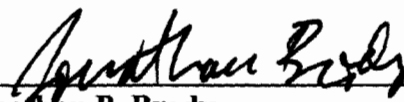
COMES NOW, the State of Idaho, by and through Jonathan P. Brody, Minidoka County Deputy Prosecuting Attorney, and moves the Court to Stay the Proceedings. As grounds therefore:

1. It is the State's understanding that the defendant has a pending appeal. The decision on that appeal would affect what relief is either available or necessary in this post-conviction action.

MOTION TO STAY PROCEEDINGS

- 1

DONE this 9th day of February, 2009.



Jonathan P. Brody
Deputy Prosecuting Attorney

MOTION TO STAY PROCEEDINGS

-2

Wally K. Schultz
ISCI Unit 10A
P.O. Box 14
Boise, Idaho 83707

Plaintiff Pro Se

FILED-DISTRICT COURT
CASE # _____

2009 FEB 20 AM 10:43

DUANE S. [Signature] CLERK
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

Wally K. Schultz
Plaintiff/Petitioner,

vs.

State of Idaho
Defendant,

)
) Case No. CV-2009-0047
) Amendment to Post Conviction
)
)
)
)
)

COMES NOW, Wally K. Schultz, with an amendment of his post conviction, which will include exhibits;

In exhibit A this honorable court will take notice that no issues were addressed upon appeal, because of the petitioner's guilty plea. Therefore there is no relief, being sought through appeal in case no. CR 2005-885, docket no. 33255.

-I-

Your petitioner, Wally K. Schultz, seeks relief on his petition of post conviction for misconduct by the prosecutor, (Jason Walker) where Mr. Walker did not provide a true and full discovery under rules §16. As was testified to by Lieutenant Dan Kindig in exhibit B, in case transcripts no. 2005-1139. Where Mr. Kindig testified that Mr. Schultz had been under surveillance and was being investigated by himself and Aaron Andres. To which the prosecutor never made any reference to any investigations or surveillances in any of his discovery releases to the defence counsel or Mr. Schultz. Therefore Mr. Schultz would ask this honorable court to vacate the previously imposed sentence.

-II-

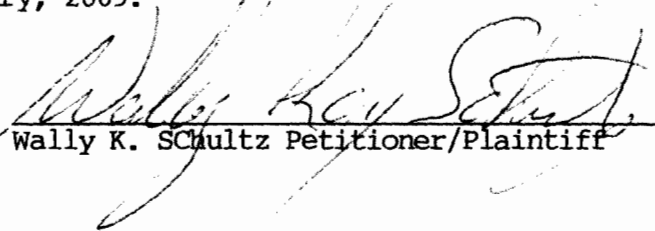
As this honorable court never honored the original plea agreement with Mr. Schultz (See Exhibit C) Mr. Schultz asks this honorable court to allow him to withdraw the guilty plea and requests a Franks hearing on his suppression hearing.

-III-

Petitioner, Wally Kay Schultz further alleges and claims that he was not provided with effective assistance from council, and alledges ineffective assistance from council by Dennis Bylington and David Penna. Where David did not file a timely appeal in this matter, .

I have subscribed the foregoing motion; that I know the contents thereof, and that the matters and informations therein set forth are true.

signed on this 17 day of February, 2009.


Wally K. Schultz Petitioner/Plaintiff

STATEMENT OF THE CASE

Nature of the Case

Wally Schultz was charged with possession of a controlled substance (methamphetamine) in one case and felony domestic violence (battery) in another. Although the two cases were largely unrelated, they were, at times, handled together in the district court and then consolidated in the present appeal.

Pursuant to a plea agreement, Mr. Schultz pled guilty in the possession case.

On appeal, he raises no issues related to that case.

The battery case, however, proceeded to a jury trial wherein the prosecutor made certain arguments which Mr. Schultz now contends were improper. Specifically, Mr. Schultz asserts that the prosecutor engaged in misconduct by implicitly commenting on Mr. Schultz' failure to testify, and by exhorting the jury to convict Mr. Schultz based on sympathy for the alleged domestic violence victim, a desire to protect her from further abuse, and a desire to cure society's domestic violence problems generally.

Statement of the Facts and Course of Proceedings

On April 7, 2005, Wally Schultz was arrested based on suspicion of methamphetamine possession. (Drug Case R., p.23.)¹ The following day, he was charged with a single count of possession of a controlled substance

¹ This is a consolidated appeal of two Minidoka County cases. To limit confusion, one case (Supreme Court No. 33255) is referred to herein as the "Drug Case" and the other (Supreme Court No. 33256) is referred to as the "Battery Case." Accordingly, citations to the Clerk's Records in this Appellant's brief include the prefix "Drug Case," or Battery Case," as appropriate.

1 A. Yes, sir.
2 Q. Have you asked him to do anything in this case
3 that he has not done for you?
4 A. No, sir.
5 Q. With all this in mind then is it your intention
6 to plead guilty to the charge?
7 A. Yes, sir.
8 Q. To the charge then of possession of a controlled
9 substance: Methamphetamine, set forth in part one of the
10 information, Idaho Code Section 37-2732(c)(1), a felony, on
11 April 7th, 2005 in Minidoka County, Idaho, how do you wish
12 to plead?
13 A. Guilty.
14 Q. And did you in fact have possession of
15 methamphetamine on that date? Did you have possession of
16 methamphetamine then?
17 A. Yes.
18 THE COURT: Mr. Pena, is there any legal reason
19 you know of that the plea should not be accepted then?
20 MR. PENA: I don't believe so, Your Honor.
21 THE COURT: I will accept the plea as being
22 knowingly and voluntarily made and factually based.
23 BY THE COURT:
24 Q. Mr. Schultz, as I understand it, sir, you wish to
25 be sentenced on this charge today; is that correct?

7

1 A. Yes, sir.
2 Q. A person who pleads guilty to a felony charge has
3 a statutory period that they're entitled to wait, I believe
4 it's either three or five days, and I apologize, I can't
5 remember.
6 Counsel, do you happen to know which it is?
7 MR. WALKER: I think it's two days.
8 MR. PENA: Two days.
9 BY THE COURT:
10 Q. All right, two days. There's a time limit -- in
11 other words, you can request a two-day continuance now and
12 I would be required to grant that before I could sentence
13 you on this charge, so you'd be sentenced sometime after
14 that two-day-time period. Is it your voluntary decision to
15 waive or give up that two-day waiting period before you're
16 sentenced?
17 A. Yes, sir.
18 THE COURT: Is there any reason, Mr. Pena, you
19 know of that the court should not proceed with sentencing
20 today?
21 MR. PENA: No, Your Honor.
22 THE COURT: I have previously reviewed the
23 presentence investigation prepared in connection with Case
24 Number CR 2005-1139, and as you all know, the
25 recommendation in that case from the investigator was for

8

1 the retained jurisdiction program. The State did request
2 imposition of a prison sentence, but the court followed the
3 recommendation of retained jurisdiction for reasons I've
4 already explained. Mr. Pena, other than the corrections
5 noted -- or the additions noted this morning when Mr.
6 Schultz was sentenced in Case Number CR 2005-1139, are
7 there any other corrections or additions to the PSI?
8 MR. PENA: I don't believe so, Your Honor. Just
9 the ones that were made this morning.
10 THE COURT: And, Mr. Walker, then does the State
11 wish to make a sentencing recommendation?
12 MR. WALKER: I do, Your Honor. And in doing so
13 think I will outline what I understand the plea agreement
14 to be as well, so if there's any question as to that, we
15 can address that now as well.
16 Based on the court's ruling this morning and the
17 sentence that was imposed this morning, the State has
18 agreed to recommend a sentence consisting of three years
19 determinate, followed by four years indeterminate, for a
20 total of seven in this case. And that we would -- because
21 the court's has already retained jurisdiction in this case,
22 we would agree with the rider program in this particular
23 case. We would ask that that sentence run consecutively.
24 The plea agreement we have was that, in fact, the State
25 would make the recommendation that I've just made, but the

9

1 upon return from the rider, either jointly or individually,
2 a motion could be made to run the cases concurrently.
3 The State has basically wanted to reserve its
4 right to argue for a consecutive sentence, but it's -- as
5 the court knows, you can always go down, but you can't go
6 up, so the State's recommendation today is that that
7 sentence we are asking run consecutively. And I would --
8 and I don't know that we talked about this -- but if the
9 State does not join in the motion to run the sentences
10 concurrently at the end, the State would stand silent and
11 allow Mr. Schultz to argue for the concurrent sentences
12 without any argument from the State on that issue.
13 THE COURT: All right.
14 MR. WALKER: In other words, my argument today
15 for the consecutive sentences would be the only argument I
16 will make, and then it will be up to him and the rider
17 program to convince you after the fact that those should be
18 run concurrently. I think there's a valid justification
19 for running them consecutively, and I would respectfully
20 ask the court do that.
21 As I've argued previously, Mr. Schultz has a
22 quite a criminal history, as you can see as we were going
23 through it, and after I sat down to total it up, there were
24 17 misdemeanor convictions, four felonies, and this makes
25 the fifth felony. So he certainly has done a lot. The

10

1 A. Probably another additional 20 yards, so we were
2 probably between 45 and 50 yards apart at that point.

3 Q. Thank you, Lieutenant. You can be seated.

4 As you approached -- as you exited your vehicle
5 what did you do next?

6 A. Deputy Moore was off to my left as we were coming
7 up against the shop area. There's a shop door at the
8 bottom of the building there. There's was a banging on
9 that door and there was a hasp with a lock on it. The lock
10 wasn't locked, but it was through the hasp. I continued
11 past that because Deputy Moore had already got to that
12 point and I continued onto Schultz.

13 Q. What was your objective at that point?

14 A. My objective was to make sure that I get
15 everybody secured and secure that scene.

16 Q. What did you do?

17 A. I went over to Schultz and brought him back
18 towards my vehicle.

19 Q. Was there anybody else present in the yard that
20 you saw?

21 A. Not that I saw, no.

22 Q. Did you come into contact with any other
23 individuals?

24 A. No.

25 Q. Did you come into contact with Laurie Morrill?

37

1 A. Morrill -- Laura actually I believe it is --
2 had called me on two occasions worried about the safety
3 her daughter.

4 Q. And are you familiar with where Laurie Morrill
5 was residing on May 2nd, 2005?

6 A. The Schultz residence.

7 MR. BYINGTON: Objection, Your Honor. At this
8 point in time we'd need foundation.

9 MR. WALKER: Your Honor, I'm trying to lay that
10 foundation. I'm asking if he is familiar with where she
11 was living.

12 THE COURT: Objection overruled for now. You may
13 continue with the question, Mr. Walker.

14 BY MR. WALKER:

15 Q. Are you in fact familiar with where Laurie
16 Morrill lived on May 2nd, 2005?

17 A. Yes.

18 Q. How are you familiar with that?

19 A. At that current time Mr. Schultz was under
20 investigation and surveillance was being done on that
21 residence.

22 Q. Who conducted that surveillance?

23 A. Myself and Deputy Aaron Andres.

24 Q. What things did you observe during that
25 surveillance?

39

1 A. I seen her talking with Deputy Moore.

2 Q. Did you visit with her at all?

3 A. No, I did not.

4 Q. What did you to do once you made contact with Mr.
5 Schultz?

6 A. Just detained Mr. Schultz until Deputy Moore told
7 me there was a -- that he would be arrested for the
8 battery.

9 Q. When you said he told you, how did that happen?

10 A. Deputy Moore just walked over to me, said that
11 there was evidence that this crime had occurred and that he
12 would be taken into custody.

13 Q. Okay. Are you familiar with Laurie Morrill?

14 A. I am.

15 Q. How do you know Laurie Morrill?

16 A. I've spoke to her a few times.

17 Q. Are you familiar with a person by the name of
18 Laura Morrill?

19 A. I believe that's her mother.

20 Q. Are you familiar with her?

21 A. Only by phone conversations.

22 Q. Approximately how many times have you spoken with
23 her?

24 A. Four, five probably.

25 Q. What was the purpose of those conversations?

38

1 A. The coming and going of people from that
2 residence.

3 Q. Did that include Laurie Morrill?

4 A. Yes, sir.

5 Q. Can you describe to the jury what type of
6 behavior you saw from Ms. Morrill?

7 A. In the time that we had the house under
8 surveillance, we would see her come and go. There's an
9 upstairs area that is led by some stairs in the back of the
10 residence to a door. She would exit there and enter from
11 there frequently, you know, sometimes more on one day than
12 the other, and she would be seen leaving and then come
13 back, along with some other folks.

14 Q. What would she leave in?

15 A. One time sticks in mind there was an older yellow
16 Ford pickup that belongs to Schultz that she was driving.

17 Q. How do you know it belongs to Mr. Schultz?

18 A. Because I had stopped that vehicle before.

19 Q. Based upon your training and experience did her
20 conduct fit with -- can you describe -- I guess you'd made
21 some comment that you were familiar with her residence. Is
22 this what you based that on?

23 A. Yes, sir.

24 Q. And based on that did you believe her to be
25 living there?

40

36

copy Exhibit
1 I'm POST certified through the Idaho Peace

2 Officers Standard Training. I have an intermediate
3 certificate. I have collectively about 1500 hours of law
4 enforcement training in law.

5 Q. Could you tell them a little bit about -- just
6 kind of a summary of the areas you've covered with your
7 training?

8 A. My main stay was narcotics. I worked with the
9 DEA, certified through the DEA and FBI. Went through Top
10 Gun Narcotics School. Mainly investigative-stated stuff
11 throughout my career.

12 Q. Did any of your training and experience deal with
13 investigating domestic violence cases?

14 A. Yes.

15 Q. Can you tell the jury a little bit about that
16 training?

17 A. Some of the training offered through the Peace
18 Officers Standard Training is evidence collection; domestic
19 battered wife syndrome; domestic violence, as far as
20 aggravated, not aggravated; using weapons, not using
21 weapons, and how to investigate those crimes.

22 Q. Are you familiar with the defendant Wally
23 Schultz?

24 A. Yes, I am.

25 Q. How do you know Mr. Schultz?

33

1 A. I've had numerous occasions to either arrest Mr.
2 Schultz or investigate him for something.

3 Q. And do you recall coming into contact with the
4 defendant on May 2nd, 2005?

5 A. Yes, sir.

6 Q. What circumstances brought you into contact with
7 Mr. Schultz?

8 A. On that day at approximately around 12:30 p.m. I
9 was dispatched to a call to his shop outside of Paul for a
10 battered or a beaten-woman call.

11 Q. Do you recall what information you received
12 through dispatch?

13 A. It was pretty vague. It was -- the information
14 basically was a female that was being held at the shop that
15 had been battered.

16 Q. Was there any indication as to what type of call
17 dispatch had received?

18 A. Just that.

19 Q. How did that call -- are you familiar with how
20 that call came into dispatch?

21 A. That call came in, originated off a 911 emergency
22 line.

23 Q. How do you know that, Lieutenant Kindig?

24 A. I'm the emergency response coordinator for our
25 dispatch center and I was asked to pull that call off of

34

our 911 system.

2 Q. Can you explain what you mean when you say I
3 off that system?

4 A. When all the phone calls in -- when folks call
5 911, they're digitally recorded into the sheriffs office:
6 Radio traffic, telephone calls, and then that is held into
7 our system forever. It's on a disk. And then when we need
8 to re-look at those, re-visit those, then we go and get a
9 recording from there.

10 Q. What happened -- or what location were you sent
11 to?

12 A. I believe the physical address is 144 South, 600
13 West, Paul, Minidoka County, State of Idaho.

14 Q. And how long did it take you after receiving the
15 dispatch call to arrive there?

16 A. Probably within five to seven minutes would be my
17 best guess.

18 Q. What did you do when you arrived at the scene?

19 A. When I arrived at the scene Deputy Moore and I
20 arrived close to the same time frame. When I pulled up Mr.
21 Schultz was in the back area of the residence, to the east,
22 and was standing along some old automobiles.

23 Q. To your left on the easel, Lieutenant Kindig, is
24 a diagram which I'll represent to you was drawn by Deputy
25 Moore. If you would just take a little bit of time and

35

1 familiarize yourself with that drawing.

2 A. Okay.

3 Q. Is that -- do you recognize that?

4 A. Yes.

5 Q. Can you tell the jury what you believe that is?

6 A. I believe that to be the shop area residence of
7 Wally Schultz.

8 Q. Can you show on the diagram where you parked your
9 vehicle when you arrived?

10 A. I would have been parked in this area, right
11 here. I believe there's a gate right here.

12 Q. Okay. And where was Mr. Schultz when you
13 arrived?

14 A. If I understand these drawings correctly, these
15 would be vehicles, I'm assuming he would be in this area
16 here, out by the vehicles.

17 Q. Approximately how far from the gate?

18 A. 15 - 20 yards.

19 Q. From the gate itself?

20 A. I believe so.

21 Q. Approximately how far from where you parked your
22 vehicle?

23 A. From the gate or from him?

24 Q. From him to where your vehicle was parked.
25 Between you and your vehicle.

36

37

FILED-DISTRICT COURT
CASE # _____

2009 MAR -3 PM 1:45

DUANE SMITH, CLERK
_____, DEPUTY

Date: 3/3/2009

Fifth Judicial District Court - Minidoka County

User: JANET

Time: 01:43 PM

Minutes Report

Page 1 of 1

Case: CV-2009-0000047

Wally Kay Schultz, Plaintiff vs State Of Idaho, Defendant

Selected Items

Hearing type:	Status Conference	Minutes date:	03/02/2009
Assigned judge:	R. Barry Wood	Start time:	04:18 PM
Court reporter:	Maureen Newton	End time:	04:20 PM
Minutes clerk:	Janet Sunderland	Audio tape number:	

Parties: Schultz, Wally; Zollinger, Clayne
State of Idaho,; Jon Brody

Tape Counter: 418 Court calls case, notes that petitioner is NOT PRESENT with counsel, here on State's motion to stay proceedings, filed on 2-10-09,
Mr. Brody: makes argument in support of Motion to Stay, have issues outstanding on appeal now
Mr. Zollinger: no objection
Court grants motion to stay pending when direct appeal is granted - leave up to counsel to notify court when remittatur is filed

Tape Counter: 420 In recess

38
SCANNED

Inmate Name Wally Schultz
IDOC No. 193761
Address P.O. Box 14
ISC I Boise Id 83707

2009 MAR 24 PM 4:30

DUANE SMITH, CLERK
DEPUTY

Petitioner

IN THE DISTRICT COURT OF THE 1st JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF Minidoka

Wally Kay Schultz

Petitioner,

vs.

State of Idaho

Respondent.

Case No. CV-2009-221

PETITION AND AFFIDAVIT
FOR POST CONVICTION
RELIEF

The Petitioner alleges:

1. Place of detention if in custody: ISCI-Boise Id
2. Name and location of the Court which imposed judgement/sentence: Minidoka county - Rupert Id
3. The case number and the offense or offenses for which sentence was imposed:
 - (a) Case Number: CR-2005-1139
 - (b) Offense Convicted: domestic violence (battery)
4. The date upon which sentence was imposed and the terms of sentence:
 - a. Date of Sentence: 12-5-05
 - b. Terms of Sentence: 5 plus 5 for a total of 10

3.

5. Check whether a finding of guilty was made after a plea:

☒ Of guilty

☐ Of not guilty

6. Did you appeal from the judgment of conviction or the imposition of sentence?

☒ Yes [] No

If so, what was the Docket Number of the Appeal? 33256

7. State concisely all the grounds on which you base your application for post conviction relief: (Use additional sheets if necessary.)

(a) Ineffective assistance of counsel

(b) prosecutorial misconduct

(c) _____

8. Prior to this petition, have you filed with respect to this conviction:

a. Petitions in State or Federal Court for habeas corpus? _____

b. Any other petitions, motions, or applications in any other court? yes

c. If you answered yes to a or b above, state the name and court in which each petition, motion or application was filed:

appeal

9. If your application is based upon the failure of counsel to adequately represent you, state concisely *and in detail* what counsel failed to do in representing your interests:

(a) Failed to object to prosecutor's comments

(b) Failed to call subpoenaed witnesses

(c) Failed to investigate my claims of the alleged victim's character and morals

10. Are you seeking leave to proceed in forma pauperis, that is, requesting the proceeding be at county expense? (If your answer is "yes", you must fill out a Motion to Proceed in Forma Pauperis and supporting affidavit.)

☒ Yes [] No

11. Are you requesting the appointment of counsel to represent you in this case? (If your answer is "yes", you must fill out a Motion for the Appointment of Counsel and supporting affidavit, as well as a Motion to Proceed In Forma Pauperis and supporting affidavit.)

☒ Yes [] No

12. State specifically the relief you seek:

Vacate the sentence and remand it for a new trial

13. This Petition may be accompanied by affidavits in support of the petition. (Forms for this are available.)

DATED this 20 day of March, 2009.

[Signature]
Petitioner

STATE OF IDAHO)
County of Minidoka) ss

Wally Kay Schaffz, being sworn, deposes and says that the party is the Petitioner in the above-entitled appeal and that all statements in this PETITION FOR POST CONVICTION RELIEF are true and correct to the best of his or her knowledge and belief.

[Signature]
Petitioner

SUBSCRIBED AND SWORN and AFFIRMED to before me this 20 day of March, 2009.

(SEAL)

Terri M. Hinckley
Notary Public
State of Idaho

Terri M. Hinckley
Notary Public for Idaho
Commission expires: 8/31/2011

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 20 day of March, 2009, I mailed a copy of this PETITION FOR POST CONVICTION RELIEF for the purposes of filing with the court and of mailing a true and correct copy via prison mail system to the U.S. mail system to:

Minidoka County Prosecuting Attorney
P.O. Box 368
Rupert Id 83350



Petitioner

AFFIDAVIT OF FACTS IN SUPPORT OF POST-CONVICTION PETITION MAR 24 PM 4:3

STATE OF IDAHO)
COUNTY OF Minidoka) ss

DUANE SMITH, CLERK
DEPUTY

Wally Kay Schultz, being first duly sworn on oath, deposes and says:

Where my claim of ineffective assistance of counsel
and where defense counsel (Dennis Byington) began his
two tiered conspiracy with state and local law enforcement
agents.

At the preliminary hearing held on June 8th, 2005, the
petitioner had asked defense counsel to postpone the
hearing due to the fact that the presiding judge, the
Honorable Rick L. Ballar, had previously been the prosecuting
attorney in several actions against the petitioner in
Minidoka County.

Petitioner also claims that defense counsel refused to
call witnesses on his behalf, stating at the preliminary
hearing that "I think (it) is a tactically correct choice
in this case" and that "it would not be my intent to
call witnesses," contrary to the petitioners wishes.

Where petitioner brings his claim of ineffective
assistance of counsel is under the Sixth Amendment
of the Constitution of the United States of America.

which states, "Rights of the Accused. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense." Petitioner hereby alleges that defense counsel provided him with ineffective assistance, assistance being defined as aid or to provide with what is useful in achieving an end, in that petitioner wished to call several witnesses on his behalf, to wit, Norman Radabaugh, John Hale, Lee Schultz, Christopher Schultz, Deanne Bradley and Kimber Lee Marston (see Exhibits B, C & D) who would have testified that Laurie Morrill was not living with petitioner.

Also, petitioner has a notarized statement from Jay Summers stating Ms. Morrill was living with him at the time of the alleged domestic battery (see Exhibit E). Also included is a statement from Philip Ochoa in which he states

pag 2

Ms. Morrill was not residing or living with the petitioner after the end of November or the beginning of December, 2004. (Exhibit F)

In addition, petitioner requested defense counsel pursue a theory of defense of personal property and to attempt to attack and raise questions as to the moral character of Ms. Morrill. Petitioner believed he had the right to protect and defend his and his father's property against theft, said theft being perpetrated by Ms. Morrill. Defense counsel did not believe this was necessary, contrary to the petitioners wishes, in spite of statements in the petitioners possession from Steve Hernandez outlining the theft of several items belonging to him, his brother, his sister-in-law, and her boyfriend after he allowed Ms. Morrill to temporarily live at his brothers residence (see Exhibit G), from Kimber Jae Marston describing a conversation he had concerning thefts made by


Lastly, petitioner was told by Defense counsel to
withdraw a pro se motion for new trial he had
filed with the court. (see Exhibit K)

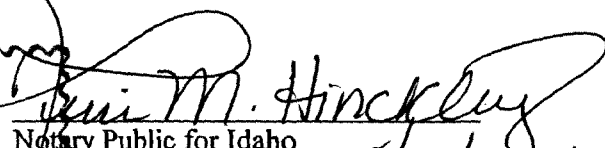
Further your affiant sayeth not.


Signature of Affiant

SUBSCRIBED AND SWORN AND AFFIRMED TO before me this ____ day of

March, 2009


Jerri M. Hincley
Notary Public
State of Idaho


Notary Public for Idaho
My Commission Expires: 8/31/2011

COPY

Exhibit A

FILED--CLERK
CASE #
05 JUN 28 PM
BURLEY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

STATE OF IDAHO,

Plaintiff,

vs.

WALLY SCHULTZ,

Defendant.

HEARING

Case No. CR-2005-01139*D

Hearing held:
Preliminary Hearing
Rupert, Idaho
June 08, 2005

Before the Honorable Rick L. Bollar
Magistrate Judge

Appearances:

Nicole Cannon, Esq., P.O. Box 368, Rupert, Idaho 83350,
Appearing on behalf of the Plaintiff,

Dennis Byington, Esq., P.O. Box 249, Burley, ID 83318,
Appearing on behalf of the Defendant.

Transcribed by:
B. Villicaña
P.O. Box 131
Rupert, Idaho 83350

1 calling a number of witnesses. When I talked to him
2 earlier today, he'd indicated that he might but he was
3 not sure and it was a - - possibly just depending on
4 testimony.

5 THE COURT: If there is anyone who is possibly
6 going to be called as a witness either by the State or
7 by the defense in this matter, if you please step
8 outside and wait to be called. Please don't discuss
9 your testimony with anyone while you await being called
10 to testify, and the bailiff will call you when it is
11 time for you to present your evidence.

12 exhibit
13 A MR. BYINGTON: Your Honor, for the record, Mr.
14 Schultz won't discuss certain matters with me. It is
15 not my intent to call any witnesses today. He
16 indicates or has indicated in the past that he may wish
17 to do something other than what I think is a tactically
18 correct choice in his case, so I need to make that
19 clear in the record that based upon the discovery we've
20 received and the information that we have, we want to
21 proceed with the preliminary hearing, but it would not
22 be my intent to call witnesses.

23 THE COURT: Very well. That matter will be noted,
24 and with that and the exclusion of no witnesses, then
25 State may call its first witness.

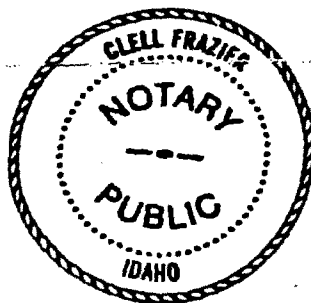
MS. CANNON: The State would call Laurie Morrill.

exhib B

On April 3, 2005 I was getting a ride from Heyburn Idaho to Shoshone Idaho. I was riding with Wally Schultz & Mike Witt, Better known as Miles. Miles kept going on and on about getting even with Jay Summers, Laurie Morrill for stealing the stereo out of his pickup & furniture out of his house. Wally & I kept telling Miles it wasn't worth going to jail. Wally said to Miles you know that Jay will tell on you. Miles was not having it he was bound and determined to get even. Upon arriving to Shoshone I told Miles he was stupid if he didn't let it go. He said he wasn't because no body does this to him and gets a way with it. At this time Wally told Miles he did not want any part of getting even with Jay and Laurie to just take him home. Wally then said that even though him and Laurie were through he wished Laurie no harm because he loves her. At this time we were to the park in Shoshone where I ~~was supposed to~~ got out to have a picnic with my family.

Kimber Jac Marston
Kimber Jac Marston

Subscribed and sworn before me this 22nd day of June 2005.



Notary

Clell Frazier

Comm. Exp.

03-20-07

Nov 20, 2005

to whom it may concern.

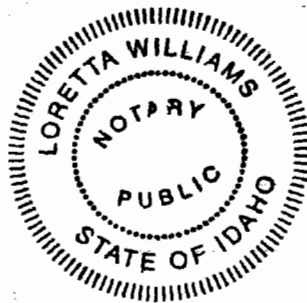
I Norman Radabaugh was subpoenaed to testify at Wally's trial. Even though I was there Twice ^{I WAS NOT} ~~I CAN~~ verify that the girl Wally assaulted was NOT living there because another girl was living with Wally. That week. I seen her everyday for several days. She had a small Baby.

Norman Radabaugh
142. So. 600 W
Paul ID. 83347
208 438-5714

exhibit D

I John Hale am
writing this Affidavit on
behalf of Wally Kay SCHULTZ
in regards to Laurie MORRIS
THAT SHE WAS NO LONGER LIVING
WITH Wally SCHULTZ after
Dec. of 2004. Because I John
Hale was at Wallys House at
least once a week. AND I
was there at least once during
the time period of April 29th
thru May 2nd of 2005.

I John Hale Believe this to be
true to the BEST of my
knowledge (memory)



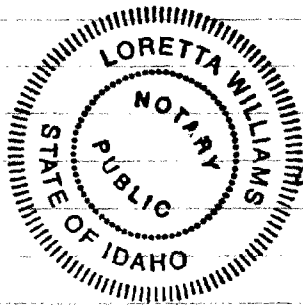
John Hale
Loretta Williams
Crossin Co
10-23-2012

Exhibit E

TO WHOM IT MAY CONCERN

2-19-08

This statement is to verify that
Laurie Morrill did not live with
Mr Shultz any time during
2005 Mr Shultz had kicked her
out before Christmas of 2004. that
is when she was living with me.
until she moved back with her
parents late June of 2005



Loran Summers

Loran Summers

Loretta Williams

Cassia Co

10.23.2012

Exhibit F

3-10-08

To whom it may concern
this is to let you know that
Laurie Morrill was not staying with
Wally Shultz at any time in 2005
I know she showed up at Wally's place
around the end September or the beginning
of October of 2004. She left when
Wally kicked her out around the end
of November or the 1st of December, after
that I never seen her at Wally's
again.

Felipe Ochoa

Exhibit 6

I, Steve Hernandez, am stating that the facts contained in this affidavit are true and correct to the best of my knowledge. I allowed Laurie Morrill to temporarily reside at my brothers residence, 2885 E 3300 N, Twin Falls, Idaho, where I was residing at the time. When Mrs. Morrill decided to leave she stole miscellaneous antique items belonging to me and my brothers family. She also went through my sister-in-laws, Sabrina Hernandez, purse removing \$25.00 that she had been saving for her children. She also took all of her boyfriends personal belongings and left him stranded there with nothing. I feel that she is a very astute thief and that she is very good at portraying herself as a victim and I believe that if she is investigated that she has done this before. I am willing to testify to these facts in a court of law if necessary. Thank you.

Steve Hernandez

SUBSCRIBED and SWORN to before me this 7th



Shannon Taylor
Notary Public For Blaine County
Residing at Jerome County

My Commission expires:

5th JUDICIAL DISTRICT, STATE OF IDAHO
CASSIDY COUNTY
SMALL CLAIMS DEPARTMENT

FILED 2005 FEB 28 P 10:24
AT _____ M
CLERK OF THE DISTRICT COURT
BY _____ Deputy

Kerry Eugene Mancus
by Leeann Mancus (poa)
Present: Yes No PLAINTIFF(S),

CASE NO. CV-2005-104

JUDGMENT

vs. Lurie Freitag Aka
Ramie Morrill
Present: Yes No DEFENDANT(S).

It appears from the court's file that service of process has been made upon the defendant.

~~3~~ Judgment is entered in favor of the plaintiff on the claim in the amount of \$_____, with costs in the amount of \$_____, for a total judgment of \$_____.

☒ Judgment is entered in favor of the plaintiff for recovery and possession of the following personal property which the Defendant is hereby ordered to return to the Plaintiff,

and for costs in the amount of \$ _____

After the defendant has paid the money required by the judgment, and returns any personal property required by the judgment, the defendant has *satisfied* the judgment. The Plaintiff is ordered to complete and file a Satisfaction of Judgment with the court clerk within 30 days after the judgment is satisfied.

- ☒ This is a default judgment.
☐ This judgment is based on the agreement of the parties.
☐ Judgment is entered in favor of the defendant. The plaintiff's claim is denied.
☐ The plaintiff's claim is dismissed without prejudice.
☐ The plaintiff's claim is dismissed with prejudice.

Date: 2-28-05

Magistrate Judge

Copy served on plaintiff by hand-delivery mailed to address shown in court files.
Copy served on defendant by hand-delivery mailed to address shown in court files.

2-28-05
Date

Deputy Clerk

DISMISSAL BY PLAINTIFF

- ☐ The plaintiff acknowledges full satisfaction of the claim, and dismisses the claim in this case.
- ☐ The defendant has not filed an answer, and the plaintiff dismisses the claim in this case without prejudice pursuant to I.R.C.P. 41(a)(1).

Date: _____

Plaintiff

Exhibit H

Jan. 20, 2005

Claim
Small claim Form SC1-2-attachment

FIFTH JUDICIAL DISTRICT
CASSIA COUNTY
SMALL CLAIMS DEPT.

PERSONAL PROPERTY: I am the owner, or I am entitled to possess, the following personal property, which is being held by the defendant:

30" Sony Television
Every box with my name or initial
Black Carhart Coat with A.P.E. on front and back
Black Filson brand wool coat
Hip-high rubber boots
Insulated Browning brand chest waders
Brown file box with personal paperwork
Hand engraved elk horn belt buckle-gift from parents
Antique fly rod and case - gift from grandfather
12' rose-colored fiberglass step ladder
Miscellaneous papers, photos and memorabilia
Shirts, pants, underwear, socks
Any footwear (boots and shoes)

If the defendant has sold any of my personal property listed above I feel entitled to the following property purchased by me, also being held by the defendant:

Gray leather couch, loveseat, chair and ottoman
Log entertainment center
Upright freezer
Washer and dryer

Kerry E. Moncur by Ted Thompson (POA)
Kerry E. Moncur, Plaintiff

Attachment to judgment
CV-05-104

EXHIBIT - I -

Person Number: 000075062 FREITAG, LAURIE ELIZABETH
Date of Birth: [REDACTED]
S.S. Number: [REDACTED]

ALIAS INFORMATION[illegible]

F7=Exit

Exhib. 7 J

CASSIA COUNTY CITY ISSUED
SHERIFF'S DEPT. ☐

IDAHO UNIFORM CITATION

IN THE DISTRICT COURT OF THE 5TH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA
STATE OF IDAHO

vs.

Frederick
Last Name
Lawrence 101, 200
First Name Middle Initial

COMPLAINT AND SUMMARY

- ☒ Infraction Citation
OR
☐ Misdemeanor Citation
☐ Accident Involved

IPUC # _____ USDOT TK Census # _____
☒ Operator ☐ Class A ☐ Class B ☐ Class C ☐ Class D ☐ Other
☐ GVWR 26001 + ☐ 16+ Persons ☐ Placard Hazardous Materials DR# _____
Home Address 104 Ridgeway Rd
Business Address No 2100, Id 83335 Ph # _____

THE UNDERSIGNED OFFICER (PARTY) HEREBY CERTIFIES AND SAYS:

I certify I have reasonable grounds, and believe the above-named Defendant,

DL or SS# HB152802 State ID Sex: ☐ M ☒ F
Height 5-7 Wt. 120 Hair BLN Eyes BUE DOB 7-2-20
Veh. Lic. # 2M3796 State ID Yr. of Vehicle 80 Make WOL
Model PKUP Color CR
Did commit the following act(s) on JAN 13 20 05 at 1145 o'clock

Vio. #1 Proot CR Code S

Vio. #2 expired CR Code S

Location Main Facing Overland
Hwy. 01-13-S Mp. 3. Wood County, Id 229
Date _____ Officer/Party _____ Serial #/Address _____ Dept. _____
Date _____ Witnessing Officer _____ Serial #/Address _____ Dept. _____

THE STATE OF IDAHO TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned to appear before the Clerk of the Magistrate's Court o

District Court of CASSIA County, BURLEY, Id
located at 1451 OVERLAND AVE. on the 24 day
of JAN 20 05 at 900 o'clock

I acknowledge receipt of this summons and I promise to appear at the time indicated.

Defendant's Signature _____

I hereby certify service upon the defendant personally on _____, 20 _____

Officer _____

NOTICE: See reverse side of your copy for PENALTY and COMPLIANCE instructions.

DEFENDANT'S COPY

Exhibit 4

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT,
IN AND FOR MINIDOKA COUNTY, STATE OF IDAHO.

SCHULTZ, WALLY
KAY

Defendant,

vs.

STATE OF IDAHO.
Plaintiff,

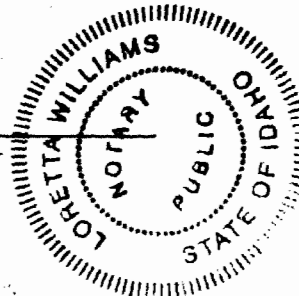
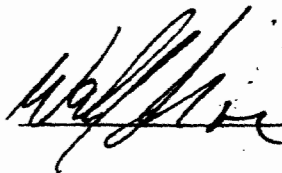
) GR-2005-1139
)
)
)
) MOTION FOR NEW TRIAL
)
) (RULE 34)
)
)

Now comes, Wally Kay Schultz, petitioning the court for a new trial for the following reasons;

1. Ineffective assistance of council
2. Newly obtained evidence
3. Was not provided with a complete and full discovery
4. Procedural misconduct
5. All pre-trial motions should have been heard before trial
6. Feel that jury was tainted from the beginning
7. Defendants witnesses were not subpoenaed

Filed pro se.

I have subscribed to the foregoing motion; that I know the contents thereof; and that the matters and informations therein set forth are true.



by Ms. Morrill (See Exhibit B), and a small claims judgment obtained against Ms. Morrill for a large quantity of personal property taken from Kerry Moneur (See Exhibit H). Petitioner also had in his possession a copy of a traffic citation in which Ms. Morrill uses an alias (Laurie Elizabeth Freitag) and provided a home address different from petitioners at a time she was alleged to be residing with him. (See Exhibit J) Petitioner believes these testimonies and items of evidence would have all served to demonstrate a pattern, lifestyle and moral character which would support his rendition of the facts surrounding the incident involving Ms. Morrill.

Lastly, there were several comments made by the prosecuting attorney in front of the jury which should have been objected to by defense counsel and were not. One of these was, "A wise judge once told me that we're in the business of giving out hope. Laurie Morrill needs some hope. She needs to know that the

system works. Show her the system works. You can protect Laurie Morrill and other Laurie Morrills by weighing the evidence and returning a just and correct verdict. You can hold the defendant accountable. I ask you to do that." By exhorting the jury in such a manner to find the petitioner guilty based on matters outside the evidence in the domestic violence case the prosecutor engaged in misconduct, which should have been objected to by defense counsel. Another incident or instance of prosecutorial misconduct which should have warranted an objection from defense counsel occurred during closing arguments when the prosecutor commented adversely on petitioner's decision to not testify on his own behalf, as petitioner was advised to do by defense counsel. The prosecutor also repeatedly asked the jury to draw conclusions from the fact that Deanna Bradley, the petitioner's fiancée, was not wearing an engagement ring on her finger when he cross-examined her.

(d) failed to subpoena visitation records from
Mini-Cassia Criminal Justice Center

(e) defense counsel entered into a two tier
conspiracy with prosecuting attorney and Minidoka
county law enforcement officials

= IDOC TRUST ===== OFFENDER BANK BALANCES ===== 03/09/2009 =

Doc No: 19376 Name: SCHULTZ, WALLY KAY
Account: CHK Status: ACTIVE

ISCI/UNT10 PRES FACIL
TIER-A CELL-16

Transaction Dates: 09/01/2008-03/09/2009

Beginning Balance	Total Charges	Total Payments	Current Balance
0.54	181.75	217.32	36.11

Date	Batch	Description	Ref Doc	Amount	Balance
09/02/2008	HQ0430068-016	011-RCPT MO/CC	RCPT/MO	20.00	20.54
09/05/2008	II0430811-116	223-IMF PAYROL	AUGUST PAY	9.40	29.94
09/08/2008	II0430956-030	099-COMM SPL		15.54DB	14.40
09/15/2008	II0431726-035	099-COMM SPL		10.07DB	4.33
09/16/2008	II0431890-020	099-COMM SPL		3.40DB	0.93
09/30/2008	II0433233-006	071-MED CO-PAY	247071	5.00DB	4.07DB
10/03/2008	II0433835-022	223-LAUNDRY	SEPT. PAY	11.80	7.73
10/06/2008	II0433996-027	099-COMM SPL		3.71DB	4.02
11/03/2008	II0437164-025	099-COMM SPL		1.27DB	2.75
11/03/2008	II0437194-018	223-LAUNDRY	OCT PAY	15.90	18.65
11/10/2008	II0438139-040	099-COMM SPL		9.16DB	9.49
11/10/2008	HQ0438203-012	011-RCPT MO/CC	RCPT MO	20.00	29.49
11/17/2008	II0438792-038	099-COMM SPL		18.87DB	10.62
11/20/2008	II0439328-014	070-PHOTO COPY	144529	0.30DB	10.32
11/23/2008	II0439421-058	099-COMM SPL		3.71DB	6.61
11/26/2008	II0439850-046	071-MED CO-PAY	150064	3.00DB	3.61
12/05/2008	II0440829-005	223-IMF PAYROL LAU	NOV PAY	21.10	24.71
12/08/2008	II0441134-036	099-COMM SPL		11.13DB	13.58
12/08/2008	II0441142-048	072-METER MAIL	152114	0.42DB	13.16
12/09/2008	II0441404-021	099-COMM SPL		4.24DB	8.92
12/15/2008	II0442009-035	099-COMM SPL		5.25DB	3.67
12/15/2008	HQ0442064-017	011-RCPT MO/CC	RCPT/MO	20.00	23.67
12/21/2008	II0442670-058	099-COMM SPL		16.12DB	7.55
12/21/2008	II0442670-059	099-COMM SPL		1.70DB	5.85
01/06/2009	II0444339-016	223-LAUNDRY	DEC PAY	30.60	36.45
01/07/2009	IM0444660-013	099-COMM SPL		21.92DB	14.53
01/07/2009	IM0444660-014	099-COMM SPL		11.66DB	2.87
01/12/2009	II0445188-009	072-METER MAIL	94662	3.02DB	0.15DB
01/12/2009	II0445188-017	072-METER MAIL	87482	1.51DB	1.66DB
01/15/2009	IM0445690-001	100-CR INM CMM		12.72	11.06
01/16/2009	HQ0445832-008	011-RCPT MO/CC	RCPT/MO	20.00	31.06
01/26/2009	II0446559-035	099-COMM SPL		15.16DB	15.90
02/05/2009	II0447777-004	223-IMF PAYROL	JAN 09	8.00	23.90
02/09/2009	II0448188-009	099-COMM SPL		9.54DB	14.36
02/10/2009	II0448444-009	099-COMM SPL		3.40DB	10.96
02/23/2009	II0449577-009	099-COMM SPL		2.65DB	8.31
03/04/2009	II0450600-009	099-COMM SPL		27.80	36.11

I hereby certify that the foregoing is a full and true copy of an instrument as the same is on file and of record in my office.
WITNESS my hand hereto affixed this 9th

day of MARCH A.D. 2009

By [Signature] Loann Barton
2345 Accountant

2009 MAR 24 PM 4:30

DUANE SMITH, CLERK
DEPUTY

Inmate name Wally Schultz
IDOC No. 19376
Address ISCI Po Box
14 Base Id 83707

Petitioner

IN THE DISTRICT COURT OF THE Fifth JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF Minidoka

Wally Kay Schultz,
Petitioner,

vs.

State of Idaho,
Respondent.

Case No. CV-2009-221

**MOTION AND AFFIDAVIT IN
SUPPORT FOR
APPOINTMENT OF
COUNSEL**

COMES NOW, Wally Kay Schultz, Petitioner in the above
entitled matter and moves this Honorable Court to grant Petitioner's Motion for Appointment of
Counsel for the reasons more fully set forth herein and in the Affidavit in Support of Motion for
Appointment of Counsel.

1. Petitioner is currently incarcerated within the Idaho Department of Corrections
under the direct care, custody and control of Warden Johann Smith
of the ISCI.

2. The issues to be presented in this case may become to complex for the Petitioner
to properly pursue. Petitioner lacks the knowledge and skill needed to represent him/herself.

3. Petitioner/Respondent required assistance completing these pleadings, as he/she
was unable to do it him/herself.

MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL - 1

Revised: 10/13/05

SCANNED

4. Other: N.A.

DATED this 20 day of March, 2009

[Signature]
Petitioner

AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL

STATE OF IDAHO)

County of Min. Dakota) ss

Wally Kay Schultz, after first being duly sworn upon his/her oath, deposes
and says as follows:

1. I am the Affiant in the above-entitled case;
2. I am currently residing at the ISCI
under the care, custody and control of Warden Shawn Smith;
3. I am indigent and do not have any funds to hire private counsel;
4. I am without bank accounts, stocks, bonds, real estate or any other form of real property;
5. I am unable to provide any other form of security;
6. I am untrained in the law;
7. If I am forced to proceed without counsel being appointed I will be unfairly handicapped in competing with trained and competent counsel of the State;

Further your affiant sayeth naught.

MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL - 2

Revised: 10/13/05

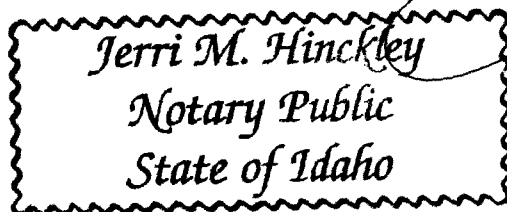
WHEREFORE, Petitioner respectfully prays that this Honorable Court issue
it's Order granting Petitioner's Motion for Appointment of Counsel to represent his/her interest,
or in the alternative grant any such relief to which it may appear the Petitioner is entitled to.

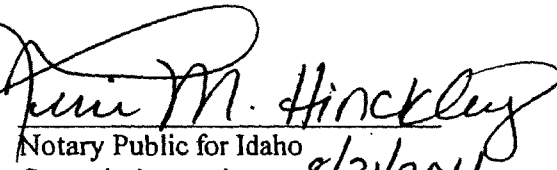
DATED This 20 day of March, 2009.


Petitioner

SUBSCRIBED AND SWORN AND AFFIRMED to before me this 20 day
of March, 2009.

(SEAL)


Jerri M. Hinckley
Notary Public
State of Idaho


Notary Public for Idaho
Commission expires: 8/31/2011

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 20 day of March, 2009, I mailed a copy of this MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL for the purposes of filing with the court and of mailing a true and correct copy via prison mail system for processing to the U.S. mail system to:

Minidoka County Prosecuting Attorney
P.O. Box #368
Rupert Id, 83350

Wally Schantz
Petitioner

Inmate name Wally Kay Schutte
IDOC No. 19376
Address P.O. Box 14
Boise ID 83702

FILED-35
CASE #

2009 APR -1 PM 4:4

DUANE J. [Signature]
DEPUTY

IN THE DISTRICT COURT OF THE Fifth JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF Minidoka

Wally Kay Schutte

Petitioner,

vs.

State of Idaho

Respondent.

Case No. CV-2009-221

**ORDER GRANTING
MOTION FOR
APPOINTMENT
OF COUNSEL**

IT IS HEARBY ORDERED that the Petitioner's Motion for Appointment of Counsel is granted and Clayne Zollinger (attorney's name), a duly licensed attorney in the State of Idaho, is hereby appointed to represent said defendant in all proceedings involving the post conviction petition.

DATED this 1 day of April, 2009.

John M. Melanson
District Judge

FILED-DISTRICT COURT
CASE # _____

2009 MAY -4 PM 12:08

DUANE SIMMONS, CLERK
DEPUTY

Date: 5/4/2009

Fifth Judicial District Court - Minidoka County

User: JANET

Time: 11:28 AM

Minutes Report

Page 1 of 1

Case: CV-2009-0000221

Wally Kay Schultz #193761, Plaintiff vs State Of Idaho, Defendant

Selected Items

Hearing type:	Status Conference	Minutes date:	05/04/2009
Assigned judge:	John M. Melanson	Start time:	11:25 AM
Court reporter:	Linda Ledbetter	End time:	11:27 AM
Minutes clerk:	Janet Sunderland	Audio tape number:	

Parties: Schultz #193761, Wally; Zollinger, Clayne
State of Idaho,; Jonathon Brody

Tape Counter: 1125 Court calls case, Petitioner is represented by Clayne Zollinger, here on status, inquires
Mr. Zollinger: addresses Court - matter previously stayed pending appeal
Court sets for further status on 7-13-09 @ 9:00 a.m.

Tape Counter: 1127 In recess

SCANNED

2009 JUN 15 PM 2:16

DUANE SMITH, CLERK
_____, DEPUTY

Date: 6/15/2009

Fifth Judicial District Court - Minidoka County

User: JANET

Time: 01:41 PM

Minutes Report

Page 1 of 1

Case: CV-2009-0000047

Wally Kay Schultz #193761, Plaintiff vs State Of Idaho, Defendant

Selected Items

Hearing type:	Status Conference	Minutes date:	06/15/2009
Assigned judge:	John M. Melanson	Start time:	01:36 PM
Court reporter:	Linda Ledbetter	End time:	01:40 PM
Minutes clerk:	Janet Sunderland	Audio tape number:	

Parties: Schultz #193761, Wally; Zollinger, Clayne
State of Idaho; Jonathon Brody

Tape Counter: 136 Court calls case, notes that petitioner is not present but is represented by Mr. Clayne Zollinger, briefly reviews case to date, case was stayed pending outcome of appeal on criminal case, inquires as to status of case
Mr. Zollinger responds - think can proceed, there are some items that need to understand petitioners complaints, asks for documents from criminal matter
Mr. Brody comments - will review
Court notes Answer was filed on 2-10-09
Mr. Brody will review file
Mr. Zollinger addresses Court - want copy of affidavit of search warrant on possession of controlled sub case, transcript of prelim hearing on domestic battery case and transcript on change of plea hearings
Court sets for status in approx 30 days
Mr. Brody agrees
Court sets 7-20-09 @ 1:30 p.m.

Tape Counter: 140

In recess

ORIGINAL

FILED-CLERK COURT
CASE # _____

2009 JUN 24 PM 4:18

DUANE S. J. CLERK
DEPUTY

**MINIDOKA COUNTY PROSECUTING ATTORNEY
STATE OF IDAHO**

LANCE D. STEVENSON, *Prosecuting Attorney (ISB#7733)*
ALAN GOODMAN, *Deputy Prosecuting Attorney (ISB#2778)*
JONATHAN P. BRODY, *Deputy Prosecuting Attorney (ISB#4960)*
MELISSA K. ASTON, *Deputy Prosecuting Attorney (ISB#7377)*
715 G. Street, P. O. Box 368
Rupert, ID 83350
Office: (208)436-7187
Facsimile: (208) 436-3177

ATTORNEYS FOR STATE OF IDAHO

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA
MAGISTRATE COURT**

WALLY K. SCHULTZ,	)	Case No. CV-2009-221
)	
Petitioner,)	
)	
vs.	)	<u>MOTION TO DISMISS</u>
)	
STATE OF IDAHO,)	
)	
Respondent.)	

COMES NOW, the State of Idaho, by and through Jonathan P. Brody, Minidoka

County Deputy Prosecuting Attorney, and does hereby submit a Motion to Dismiss

for the following reason:


1. The Petition for Post -Conviction Relief in this matter was not timely filed, and therefore should be dismissed. The petition was signed by the petitioner on March 20, 2009 and filed in the court March 24, 2009. Since the petitioner is incarcerated, this motion will assume the filing date was the

earlier date of March 20, 2009. At the time of filing, petitioner had an untimely appeal pending. On May 29, 2009, the Court of Appeals dismissed the appeal as untimely. Schultz was attempting to appeal his judgment of conviction after a retained jurisdiction, which the appellate rules allow. The District Court suspended the balance of his sentence after a rider review hearing on May 22, 2006 issuing a "Temporary Order on Rider Review." Three days later the District Court issued another order. Petitioner's notice of appeal was filed forty two days after the later order, which has been held to be untimely, and did not confer appellate jurisdiction on the Court of Appeals. Because petitioner never filed a valid appeal, his petition should be dismissed as untimely.

2. Idaho Code Section 19-4902 requires a petition for post- conviction relief to be filed within one year from the expiration of the time for appeal or from the determination of an appeal. Petitioner's time for appeal expired on July 3, 2006. Therefore, the petition had to be filed by July 3, 2007. The petition in this case was filed in March 2009, thus it is untimely and must be dismissed. The fact that petitioner had an untimely appeal pending does not change this requirement, and there is a case directly on point. Loman v.State, 138 Idaho 1 (Ct.App. 2002) addresses the same issue. In Loman the Court of Appeals held that filing a late appeal did not allow a post conviction petition to be filed within one year of the determination of a late appeal, rather it had to be filed within one year of the expiration of the time for appeal. The Court of appeals noted that to hold otherwise would simply allow the filing of an untimely appeal to extend the time for filing a post conviction relief case and render the one year limit meaningless. Accordingly, the petition in this case should be dismissed because it is clearly untimely according to the holding in Loman and the plain language of 19-4902.

3. Additional grounds exist to dismiss the petitioner's claims as to prosecutorial misconduct. Petitioner attempted to raise that issue on appeal, and it is an issue which could have been raised on appeal. Thus, pursuant to Idaho Code Section 19-4901(b) it should not afford the basis for post- conviction relief.

DATED this 24th day of June 2009.

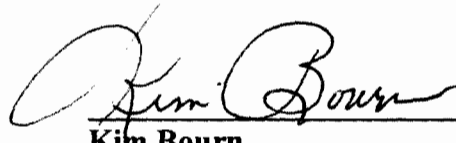


Jonathan P. Brody
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24th day of June, 2009, I
caused a true and correct copy of the foregoing ANSWER to be placed in the United
States mail, postage prepaid, addressed to:

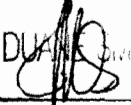
Wally K. Schultz #14376
I.M.S.I. E-13A
P. O. Box 51
Boise, ID 83707



Kim Bourn

FILED-DISTRICT COURT
CASE # _____

2009 JUL -1 PM 12:44


DUANE J. MELANSON, DEPUTY

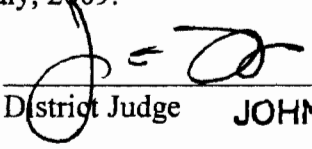
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

WALLY KAY SCHULTZ,	)	CASE NO. CV-2009-47*D
)	
Petitioner,)	
)	
Vs.	)	<u>ORDER FOR PREPARATION OF</u>
	)	<u>TRANSCRIPT</u>
STATE OF IDAHO,)	
)	
Defendant.)	
_____)	

A Petition for Post Conviction Relief having been filed, and the petitioner, having been found indigent and having been assigned the conflict Public Defender, has requested a transcript of the Change of Plea hearing held on December 12, 2005 on the underlying criminal case #CR-2005-884.

IT IS HEREBY ORDERED that the Transcript of the Change of Plea hearing held on December 12, 2005, shall be prepared at County expense.

DATED This 1st day of July, 2009.


District Judge

JOHN M. MELANSON

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1 day of July, 2009 I served a true, correct copy of the ORDER FOR PREPARATION OF TRANSCRIPTS upon the following in the manner provided.

Minidoka County Prosecutor
P. O. Box 368
Rupert, ID 83350

☐ First Class Mail
☒ Hand Delivered - Basket
☐ Faxed

Clayne Zollinger
Conflict Public Defender
P. O. Box 210
Rupert, ID 83350

☐ First Class Mail
☒ Hand Delivered - Basket
☐ Faxed

Maureen Newton
Court Reporter
P. O. Box 132
Heyburn, ID 83336

☒ First Class Mail
☐ Hand Delivered - Basket
☐ Faxed

DATED This 1 day of July, 2009

Diane Smith
Clerk

David R. Lundberg
Deputy Clerk

FILED-DISTRICT COURT
CASE # _____

2009 JUL -2 AM 9:21

DUANE SMITH, CLERK
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

WALLY KAY SCHULTZ,	)	CASE NO. CV-2009-221*D
)	
Petitioner,)	
)	
Vs.	)	<u>ORDER FOR PREPARATION OF</u>
	)	<u>TRANSCRIPT</u>
STATE OF IDAHO,)	
)	
Defendant.)	
_____)	

A Petition for Post Conviction Relief having been filed, and the petitioner, having been found indigent and having been assigned the conflict Public Defender, has requested a transcript of the Jury Trial held August 24 and 25, 2005 on the underlying criminal case #CR-2005-1139.

IT IS HEREBY ORDERED that the Transcript of the Jury Trial shall be prepared at County expense.

DATED This 2 day of July, 2009.

B. Wood
District Judge

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2 day of July, 2009, I served a true, correct copy of the ORDER FOR PREPARATION OF TRANSCRIPT upon the following in the manner provided.

Minidoka County Prosecutor

P. O. Box 368
Rupert, ID 83350

☐ First Class Mail
☒ Hand Delivered - Basket
☐ Faxed

Clayne Zollinger
Conflict Public Defender

P. O. Box 210
Rupert, ID 83350

☐ First Class Mail
☒ Hand Delivered - Basket
☐ Faxed

Maureen Newton
Court Reporter
P. O. Box 132
Heyburn, ID 83336

☒ First Class Mail
☐ Hand Delivered - Basket
☐ Faxed

DATED This 12th day of July, 2009

Quane Smith
Clerk

[Signature]
Deputy Clerk

COURT MINUTES

CV-2009-47 and CR2009-221

2009 JUL 20 PM 3: 25

Wally Kay Schultz #193761, Plaintiff vs State Of Idaho, Defendant

DUANE [Signature] CLERK
DEPUTY

Hearing type: Status Conference

Hearing date: 7/20/2009 Time: 2:36 pm

Court reporter: Maureen Newton

Minutes Clerk: Janet Sunderland

Party: State of Idaho, Attorney: Jonathon Brody

Party: Wally Schultz #193761, Attorney: Clayne Zollinger

2:37 p.m. Court calls case, briefly reviews – set for status on both cases today, inquires

2:38 p.m. Mr. Zollinger responds – refers to prior requests for transcripts, asks to reset matters for status to allow time to review transcripts which have reviewed and be able to state where cases are at and file response to Motion to dismiss.

2:39 p.m. Mr. Brody responds – State did file a motion to dismiss due to untimely, if correct then spending time and money for transcripts would not be fruitful continues.

2:40 p.m. Mr. Zollinger responds in support of continuance.

2:41 p.m. Court inquires regarding Motion to Dismiss

Mr. Zollinger responds – have not really looked at motion

2:41 p.m. Court will set Motion to Dismiss on 8-10-09 – case in recess

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

* * * * *

WALLY KAY SCHULTZ,

) Case No. CV-2009-47*D AND ~~CV-2009-~~ DEPUTY
) 221*D

Plaintiff

vs.

1) COURT MINUTES ON BOTH POST-
2) CONVICITION CASES

STATE OF IDAHO,
Defendant,

JOHN M. MELANSON, District Judge

Janet Sunderland, Deputy Clerk

DATE: August 10, 2009

TIME: 10:17 a.m.

SCANNED

ORIGINAL

FILED-DISTRICT COURT
CASE # _____

2009 AUG 19 PM 2:44

DUANE SWAN, CLERK
DEPUTY

**MINIDOKA COUNTY PROSECUTING ATTORNEY
STATE OF IDAHO**

LANCE D. STEVENSON, Prosecuting Attorney (ISB#7733)
ALAN GOODMAN, Deputy Prosecuting Attorney (ISB#2778)
JONATHAN P. BRODY, Deputy Prosecuting Attorney (ISB#4960)
MELISSA K. ASTON, Deputy Prosecuting Attorney (ISB#7377)
715 G. Street, P. O. Box 368
Rupert, ID 83350
Office: (208) 436-7187
Facsimile: (208) 436-3177
ATTORNEYS FOR STATE OF IDAHO

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE


STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

MAGISTRATE COURT

WALLY K. SCHULTZ,	)	Case No. CV-2009-47
)	
Petitioner,)	
)	
vs.	)	<u>MOTION TO DISMISS</u>
)	
STATE OF IDAHO,)	
)	
Respondent.)	

**COMES NOW, the State of Idaho, by and through Jonathan P. Brody,
Minidoka County Deputy Prosecuting Attorney, and does hereby submit a Motion
to Dismiss for the reason that the Petition for Post -Conviction Relief in this matter
was not timely filed, and therefore should be dismissed.**

DATED this 19th **day of** August **2009.**


Jonathan P. Brody
Deputy Prosecuting Attorney

MOTION TO DISMISS - 1

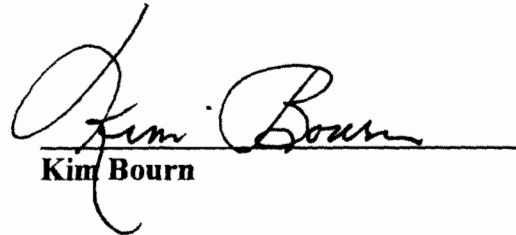
82
SCANNED

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 19th day of August, 2009, I
caused a true and correct copy of the foregoing ANSWER to be placed in the United
States mail, postage prepaid, addressed to:

Wally K. Schultz #14376
I.M.S.I. E-13A
P. O. Box 51
Boise, ID 83707

Clayne S. Zollinger, Jr.
P. O. Box 210
Rupert, ID 83350


Kim Bourn

WALLY K. SCHULTZ
ISCI UNIT 14A-20A
P.O. BOX 14
BOISE, IDAHO 83707-0014

Plaintiff/Petitioner in Propria Personna

FILED-DISTRICT COURT
CASE # CR-2009-

2009 NOV 12 AM 10:42

DUANE [Signature] DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

WALLY K. SCHULTZ/TZ	)	Case No. <u>CV.2009-47, CV-2009-221</u>
Plaintiff/Petitioner,	)	SUPPLEMENTAL BRIEF IN SUPPORT
-vs.-	)	OF POST CONVICTION RELIEF
STATE OF IDAHO,)	
Respondent,)	
_____)	

COMES NOW, WALLY K. SCHULTZ, Plaintiff/ Petitioner in the above mentioned cause of action and does hereby submit the following Supplemental Breif in Support of his Motion for Post Conviction Relief in cases no. CV-2009-47, & CV-2009-221 respectfully.

1.

The right to effective assistance of counsel is not confined to trial, but extends also to the first appeal as of right. *Evitts v. Lucey*, 469 U.S. 387 (1985). The Idaho Supreme Court has previously regognized that a good starting point in evaluating defense counsel's conduct is the American Bar Association's standards entitled "The Defense Function." See *State v. Bingham*, 116 Idaho 415, 776 P.2d 424 (1989); *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991); *Aragon v. State*, 114 Idaho 758, 760 P.2d 1174 (1988); See also *Roe v. Flores-Ortega*, 528 U.S. 470 (2000) (considering the ABA Standards For Criminal Justice Defense Function in determining whether a defense attorney renders ineffective assistance by failing to consult with a client about an appeal. *Id* at 479.) A review of the standards applicable in this case shows that counsel's performance was deficient.

Generally addressing the issue of a trial counsel's duties in regards to an appeal, standard 4-8.2(b) of the A.B.A. STANDARDS FOR CRIMINAL JUSTICE, DEFENSE FUNCTION, PART VIII- AFTER CONVICTION (3rd edition 1993) states, [d]efense counsel should take whatever steps are necessary to protect the

defendant's rights of appeal." Id. (emphasis added). Similarly, standard 5-6.2 of the A.B.A. STANDARDS FOR CRIMINAL JUSTICE PROVIDING DEFENSE SERVICES STANDARDS PART VI- STAGE OF PROCEEDINGS (3rd edition, 1992), addresses the duration of defense counsel's representation and states that, "[c]ounsel initially provided should continue to represent the defendant throughout the trial court proceedings and should preserve the defendant's right to appeal, if necessary." Id. (emphasis added).

In addition to the ABA standards, the United States Supreme Court has long held that an attorney renders ineffective assistance of counsel in violation of the Sixth Amendment to the United States Constitution when he fails to file a timely notice of appeal as requested by a client.

We have long held that a lawyer who disregards instructions from the defendant to file a notice of appeal acts in a manner that is professionally unreasonable. See *Rodriguez v. United States*, 395 U.S. 327, 23 L.Ed. 2d 340 89 S.Ct. 1715 (1969); cf. *Peguero v. United States*, 526 U.S. 23, 28, 143 L. Ed 2d 18, 119 S. Ct. 961 (1999)

("When counsel fails to file a requested appeal, a defendant is entitled to [a new] appeal without showing that his appeal, would likely have merit"). This is so because a defendant who instructs counsel to initiate an appeal reasonably relies upon counsel to file the necessary notice. Counsel's failure to do so cannot be considered a strategic decision; filing a notice of appeal is purely ministerial task, and a failure to file reflects inattention to the defendant's wishes.

Roe v. Flores-Ortega, 528 U.S. 470, 478 (2000).

Counsel failed to met the requirements of his obligations under the ABA standards and pursuant to his obligations as articulated by the United States Supreme Court when he filed a notice of appeal outside of the proper time frame, resulting in the dismissal of petitioners appeal. Accordingly, his performance was deficient.

Petitioner suffered prejudiced as a result of counsel's deficient performance In a case in which the alleged deficient performance is the failure to file a requested notice of appeal, prejudice is presumed. See *Flores-Ortega*, 528 U.S. at 478 (holding that "[counsel] performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions with

respect to an appeal."); See also *Beasley v. State*, 126 Idaho 356, 362 (1994) (holding that when counsel fails to file a requested notice of appeal, the loss of the opportunity to appeal is sufficient prejudice to support a claim of ineffective assistance of counsel). "[I]t has been said that a defendant whose counsel failed to file an appeal as requested has been deprived, not of the effective assistance of counsel, but of any assistance of counsel on appeal." *Beasley*, 126 Idaho at 361 (citations omitted).

In sum, Petitioners claim that counsel rendered ineffective assistance of counsel when he failed to file a notice of appeal in the underlying criminal cases does set forth facts to constitute grounds under I.C. § 19-4901, the facts show that he has been denied effective assistance of counsel and, therefore, his appellate rights should again be reinstated.

Dated on this the 28 day of Oct, 2009.


WALLY K. SCHULTZ

Plaintiff/Petitioner in Propria Personna

VERIFICATION:

STATE OF IDAHO)
 :SS
County of Ada)

WALLY K. SCHULTZ Upon his oath swears and says;

That Pursuant to 28 U.S.C. § 1746, I WALLY K. SCHULTZ, am the Plaintiff/Petitioner in the foregoing document and Supplemental Brief in Support of Post Conviction Relief. That I have read it and know its contents and know it to be true and correct to the best of my knowledge and belief, under the penalty of perjury.

EXECUTED AT BOISE, IDAHO on this 28 day of Oct, 2009.


WALLY K. SCHULTZ

Plaintiff/Petitioner in Propria Personna

2010 DEC 21 PM 4:13

DUANE SMITH, CLERK
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

WALLY KAY SCHULTZ,

Plaintiff

vs.

STATE OF IDAHO,

Defendant,

) Case No. CV-2009-221*D

) Case No. CV-2009-47*D

) COURT MINUTES ON

) STATE'S MOTION TO DISMISS

)

)

)

)

MICHAEL CRABTREE, District Judge
Maureen Newton, Court Reporter

DUANE SMITH, Clerk
Janet Sunderland, Deputy Clerk

DATE: December 21, 2009

TIME: 3:22 p.m.

Time:	Case activities automatically recorded on server
	- Present is Clayne Zollinger for plaintiff - Present is Lance Stevenson for defendant
3:22	Court calls cases, here on State's Motion to dismiss petitions Mr. Stevenson makes State's argument in support of motion, cites considerations, cites to Lowman V State 138I1 Court of Appeals 2002, asks that cases be dismissed based upon untimely filing.
3:24	Mr. Zollinger re: CV-2009-221 briefly reviews case to date, re: CV-2009-47 briefly reviews, have read Lowman case and understand continues, asks Court to find an exception continues, asks to find exception to Lowman and allow matters to proceed
3:28	Mr. Stevenson makes rebuttal argument in support of motion, cites considerations, and asks that motion to grant exception and Post conviction relief be dismissed.
3:28	COURT ORDERS: Grants Motions to dismiss in both cases, cites considerations - State to submit orders of dismissal
3:29	Cases in recess

SCANNED

2010 JAN -8 AM 10:43

DUANE SMITH, CLERK
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

Re: Minidoka County District
Court Cases

ORDER TO DISQUALIFY
FOR CAUSE AND ORDER OF
ASSIGNMENT

COMES NOW, JONATHAN BRODY, District Judge in the above-entitled court and
does hereby disqualify himself for cause in the cases identified in Exhibit A and petitions and
requests the Administrative Judge to appoint another District Judge to hear the entitled cases.

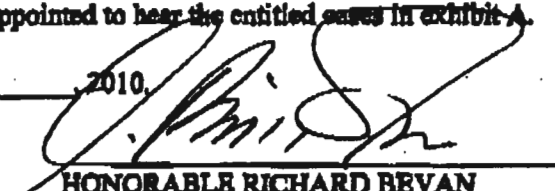
DATED this 6th day of January, 2010


Jonathan Brody, District Judge

In accordance with the above order of Jonathan Brody, District Judge, and good cause
appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Michael Crabtree
District Judge of the Fifth Judicial District is appointed to hear the entitled cases in exhibit A.

DATED this 8 day of January, 2010.


HONORABLE RICHARD BEVAN
Administrative Judge

ORDER TO DISQUALIFY FOR CAUSE AND ORDER OR REASSIGNMENT

1

SCANNED
90

EXHIBIT "A"

STATE OF IDAHO V ROSA FRANCO
CR-2008-1901

WALLY KAY SCHULTZ V STATE OF IDAHO
CV-2009-47

WALLY KAY SCHULTZ V STATE OF IDAHO
CV-2009-221

STATE OF IDAHO V JOSE LUIS DOMINGUEZ
CR-2009-2900

STATE OF IDAHO V KENNETH ALEXANDER KAISER JR.
CR-2004-2636

STATE OF IDAHO V KENNETH ALEXANDER KAISER JR.
CR-2007-391

STATE OF IDAHO V CHARLES HOOKER
CR-2008-227

RICHARD HERMAN MARTIN V STATE OF IDAHO
CV-2009-902

STATE OF IDAHO V MARK ANTHONY SALINAS
CR-2007-4468

STATE OF IDAHO V BRYTNEY D. ZAMORA
CR-2009-4730

STATE OF IDAHO V JOSE LUIS ZEPEDA
CR-2009-2284

STATE OF IDAHO V SEAN BRYNGELSON
CR-2009-1867

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14 of January, ²⁰¹⁰~~2009~~, I served a true, correct copy of the ORDER TO DISQUALIFY FOR CAUSE AND ORDER OF ASSIGNMENT upon the following in the manner provided:

Minidoka County Prosecuting Attorney

(X) Hand Delivery - Basket

Clayne S. Zollinger
P. O. Box 210
Rupert, ID 83350

(X) Hand Delivery - Basket

Mini-Cassia Public Defender
P. O. Box 188
Burley, ID 83318

(X) Hand Delivery - Basket

David G. Pena
P. O. Box 697
Burley, ID 83318

(X) First Class Mail

Michael P. Tribe
P. O. Box 396
Rupert, ID 83350

(X) Hand Delivery - Basket

Trial Court Administrator's Office
Attn: Linda Wright
P. O. Box 126
Twin Falls, ID 83303-0126

(X) Faxed 736-4002


Clerk of the District Court

By 
Deputy Clerk

ORIGINAL

FILED-DISTRICT COURT
CASE # _____

2010 JAN -8 PM 4:19

DUANE SHINN, CLERK
DEPUTY

**MINIDOKA COUNTY PROSECUTING ATTORNEY
STATE OF IDAHO**

LANCE D. STEVENSON, *Prosecuting Attorney (ISB#7733)*
ALAN GOODMAN, *Deputy Prosecuting Attorney (ISB#2778)*
ROBERT S. HEMSLEY, *Deputy Prosecuting Attorney (ISB#7955)*
715 G. Street, P. O. Box 368
Rupert, ID 83350
Office: (208)436-7187
Facsimile: (208) 436-3177

ATTORNEYS FOR THE STATE OF IDAHO

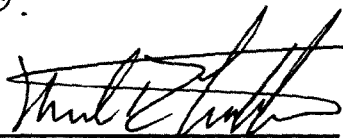
**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

WALLY K. SCHULTZ,)	
	)	CASE NO. CV-2009-47
Plaintiff,)	
	)	ORDER
vs.)	
)	
STATE OF IDAHO,)	
)	
Defendant.)	
)	

The above matter came on for hearing on the 21ST day of December, 2009, pursuant to a Motion to Dismiss Petition for Post Conviction Relief. The State was represented by Lance D. Stevenson, Minidoka County Prosecuting Attorney, and the defendant was represented by Clayne S. Zollinger, Jr.

The Court, having heard arguments of counsel, does hereby order that Motion to Dismiss be granted.

DATED this 8th day of ~~June~~, 2009. ^{JAN. 2010.}



Michael Crabtree
District Judge

CLERK'S CERTIFICATE OF MAILING

I hereby certify that on this 8 day of January, 200, I mailed a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Clayne S. Zollinger, Jr.

P. O. Box 210

Rupert, ID 83350 - *Basket*

Minidoka County Prosecuting Attorney

P. O. Box 368

Burley, ID 83350 - *Basket*

- _____ By depositing copies of the same in the United States mail, postage prepaid, at the post office in Rupert, Idaho.
- _____ By Hand delivering copies of the same to the office of the attorneys(s) at his office at the address stated above.
- _____ By placing copies of the same in the Public Defender's basket located in the Clerk's Office in the Judicial Annex, Minidoka County Courthouse.
- _____ By telecopying copies of the same to said attorneys(s) at the telecopied number _____, and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office in Rupert, Idaho.

Duane Smith
Duane Smith, Clerk

By: *[Signature]*
Deputy Clerk

ORIGINAL

FILED-DISTRICT COURT
CASE # _____

2010 JAN -8 PM 4: 22

DUANE S. SMITH, CLERK
DEPUTY

**MINIDOKA COUNTY PROSECUTING ATTORNEY
STATE OF IDAHO**

LANCE D. STEVENSON, *Prosecuting Attorney (ISB#7733)*
ALAN GOODMAN, *Deputy Prosecuting Attorney (ISB#2778)*
ROBERT S. HEMSLEY, *Deputy Prosecuting Attorney (ISB#7955)*
715 G. Street, P. O. Box 368
Rupert, ID 83350
Office: (208)436-7187
Facsimile: (208) 436-3177

ATTORNEYS FOR THE STATE OF IDAHO


**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

WALLY K. SCHULTZ,)	
	)	CASE NO. CV-2009-221
Plaintiff,)	
	)	ORDER
vs.)	
)	
STATE OF IDAHO,)	
)	
Defendant.)	
)	

The above matter came on for hearing on the 21ST day of December, 2009, pursuant to a Motion to Dismiss Petition for Post Conviction Relief. The State was represented by Lance D. Stevenson, Minidoka County Prosecuting Attorney, and the defendant was represented by Clayne S. Zollinger, Jr.

The Court, having heard arguments of counsel, does hereby order that Motion to Dismiss be granted.

DATED this 8th day of ~~June~~, 2009. ^{JAN. 2010}



Michael Crabtree
District Judge

CLERK'S CERTIFICATE OF MAILING

I hereby certify that on this 8 day of January, ²⁰¹⁰~~200~~, I mailed a true and correct copy of the within and foregoing document upon the attorney(s) named below in the manner noted:

Clayne S. Zollinger, Jr.

P. O. Box 210

Rupert, ID 83350 - *Basket*

Minidoka County Prosecuting Attorney

P. O. Box 368

Burley, ID 83350 - *Basket*

- _____ By depositing copies of the same in the United States mail, postage prepaid, at the post office in Rupert, Idaho.
- _____ By Hand delivering copies of the same to the office of the attorneys(s) at his office at the address stated above.
- _____ By placing copies of the same in the Public Defender's basket located in the Clerk's Office in the Judicial Annex, Minidoka County Courthouse.
- _____ By telecopying copies of the same to said attorneys(s) at the telecopied number _____, and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office in Rupert, Idaho.

Duane Smith
Duane Smith, Clerk

By: *[Signature]*
Deputy Clerk

Clayne S. Zollinger, Jr. (ISB #4172)

Attorney-at-Law

P.O. Box 210

Rupert, ID 83350

Office: (208) 436-1122

Fax: (208) 436-7837

Attorney for: Petitioner

FILED
CASE #

2010 JAN 27 PM 4:23

DUANE SCHULTZ, DEPUTY

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

WALLY K. SCHULTZ,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-2009-0047

NOTICE OF APPEAL

**TO: THE ABOVE NAMED DEFENDANT(S), AND THE CLERK OF THE ABOVE-
ENTITLED COURT:**

NOTICE IS HEREBY GIVEN THAT:

1. The above named Petitioner, Wally K. Schultz, appeals against the above named Respondent to the Minidoka County District Court from the Order Dismissing Petitioner's case entered in the above entitled action on the 08th day of January, 2010, The Honorable Judge Michael R. Crabtree presiding.

2. That the party has a right to appeal to the Idaho Supreme Court.

3. That the issues on appeal will include the Order to Dismiss, and other issues to be determined at a later date.

4. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not

prevent the appellant from asserting other issues on appeal.

5. Has an order been entered sealing all or any portion of the record? If so ,
what portion? No

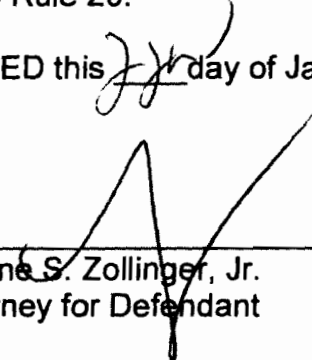
6. (a) Is a reporter's transcript requested? Yes

(b) The appellant requests the preparation of the following portions of the
reporter's transcript: Hearing on the Motion held December 21, 2009.

7. The appellant requests the following documents to be included in the clerk's
record in addition to those automatically included under Rule 28, I.A.R.

8. That service has been made upon all parties required to be served
pursuant to Rule 20.

DATED this 7th day of January, 2010.



Clayne S. Zollinger, Jr.
Attorney for Defendant

CERTIFICATE OF MAILING

I hereby certify that on this 24th day of January, 2010, I served a true and correct copy of the within and foregoing document upon the attorney(s) or person(s) named below in the manner noted:

County Prosecutor
P O Box 368
Rupert, ID 83350

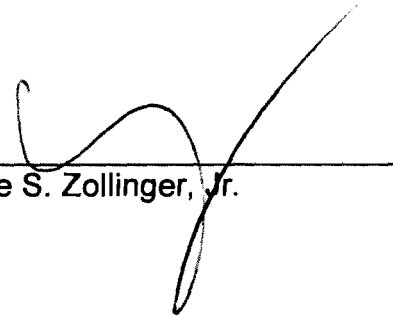
Maureen Newton
PO Box 308
Rupert, ID 83350

Lawrence G. Wasden
Idaho Attorney General
PO Box 83720
Boise, ID 83720-0010

 x By depositing copies of the same in the United States mail, postage prepaid, at the post office in Rupert, Idaho.

 By hand delivering copies of the same to the office of the attorney(s) at the address stated above.

 By telecopying copies of the same to said attorney(s) at the telecopied number(s) _____, and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office in Rupert, Idaho.



Clayne S. Zollinger, Jr.

Clayne S. Zollinger, Jr. (ISB #4172)

Attorney-at-Law

P.O. Box 210

Rupert, ID 83350

Office: (208) 436-1122

Fax: (208) 436-7837

2010 JAN 27 PM 4:23

DUANE S. [Signature] DEPUTY

Attorney for: Petitioner

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

WALLY K. SCHULTZ,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-2009-0221

NOTICE OF APPEAL

**TO: THE ABOVE NAMED DEFENDANT(S), AND THE CLERK OF THE ABOVE-
ENTITLED COURT:**

NOTICE IS HEREBY GIVEN THAT:

1. The above named Petitioner, Wally K. Schultz, appeals against the above named Respondent to the Minidoka County District Court from the Order Dismissing Petitioner's case entered in the above entitled action on the 08th day of January, 2010, The Honorable Judge Michael R. Crabtree presiding.

2. That the party has a right to appeal to the Idaho Supreme Court.

3. That the issues on appeal will include the Order to Dismiss, and other issues to be determined at a later date.

4. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not

prevent the appellant from asserting other issues on appeal.

5. Has an order been entered sealing all or any portion of the record? If so ,
what portion? No

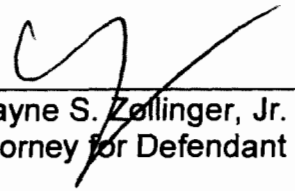
6. (a) Is a reporter's transcript requested? Yes

(b) The appellant requests the preparation of the following portions of the
reporter's transcript: Hearing on the Motion held December 21, 2009.

7. The appellant requests the following documents to be included in the clerk's
record in addition to those automatically included under Rule 28, I.A.R.

8. That service has been made upon all parties required to be served
pursuant to Rule 20.

DATED this 21st day of January, 2010.



Clayne S. Zollinger, Jr.
Attorney for Defendant

CERTIFICATE OF MAILING

I hereby certify that on this 22nd day of January, 2010, I served a true and correct copy of the within and foregoing document upon the attorney(s) or person(s) named below in the manner noted:

County Prosecutor
P O Box 368
Rupert, ID 83350

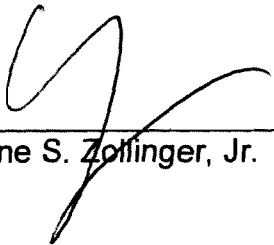
Maureen Newton
PO Box 368
Rupert, ID 83350

Lawrence G. Wasden
Idaho Attorney General
PO Box 83720
Boise, ID 83720-0010

 x By depositing copies of the same in the United States mail, postage prepaid, at the post office in Rupert, Idaho.

 By hand delivering copies of the same to the office of the attorney(s) at the address stated above.

 By telecopying copies of the same to said attorney(s) at the telecopied number(s) _____, and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office in Rupert, Idaho.



Clayne S. Zollinger, Jr.

Clayne S. Zollinger, Jr. (ISB #4172)

Attorney-at-Law

P.O. Box 210

Rupert, ID 83350

Office: (208) 436-1122

Fax: (208) 436-7837

2010 JAN 27 PM 4:23

DUANE S. [Signature] DEPUTY

Attorney for: Petitioner

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

WALLY K. SCHULTZ,	)	Case No. CV-2009-0047
)	
Petitioner,)	
vs.	)	MOTION FOR APPOINTMENT OF
	)	STATE APPELLATE PUBLIC
STATE OF IDAHO,	)	DEFENDER
)	
Respondent.)	

COMES NOW Clayne S. Zollinger, Jr., attorney for the Petitioner, and moves the Court for an Order appointing the Idaho State Appellate Public Defender's Office to represent the petitioner, Wally K. Schultz, in all matter relating to Petitioner's appeal to the Idaho Supreme Court, a Notice of Appeal having been filed with the Clerk of the above Court on the 27 day of January, 2010.

DATED this 27th day of January, 2010.

[Signature]
Clayne S. Zollinger, Jr.
Attorney for the Petitioner

CERTIFICATE OF MAILING

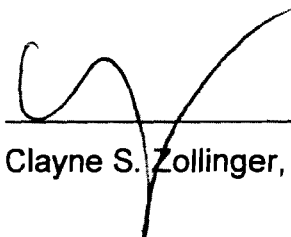
I hereby certify that on this 22nd day of January, 2010, I served a true and correct copy of the within and foregoing document upon the attorney(s) or person(s) named below in the manner noted:

Molly J. Huskey
State Appellate Public Defender
PO Box 83720
Boise, ID 83720-0005

Lance Stevenson
Minidoka Prosecuting Attorney
PO Box 368
Rupert, ID 83350

Lawrence G. Wasden
Idaho Attorney General
PO Box 83720
Boise, ID 83720-0010

- X By depositing copies of the same in the United States mail, postage prepaid, at the post office in Rupert, Idaho.
- By hand delivering copies of the same to the office of the attorney(s) at the address stated above.
- By telecopying copies of the same to said attorney(s) at the telecopied number(s) _____, and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office in Rupert, Idaho.



Clayne S. Zollinger, Jr.

Clayne S. Zollinger, Jr. (ISB #4172)

Attorney-at-Law

P.O. Box 210

Rupert, ID 83350

Office: (208) 436-1122

Fax: (208) 436-7837

Attorney for: Petitioner

FILED IN DISTRICT COURT
CASE # _____

2010 JAN 27 PM 4:23

DUANE B. SMITH, CLERK
DEPUTY

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

WALLY K. SCHULTZ,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-2009-0221

**MOTION FOR APPOINTMENT OF
STATE APPELLATE PUBLIC
DEFENDER**

COMES NOW Clayne S. Zollinger, Jr., attorney for the Petitioner, and moves the Court for an Order appointing the Idaho State Appellate Public Defender's Office to represent the petitioner, Wally K. Schultz, in all matter relating to Petitioner's appeal to the Idaho Supreme Court, a Notice of Appeal having been filed with the Clerk of the above Court on the 27 day of January, 2010.

DATED this 27th day of January, 2010.



Clayne S. Zollinger, Jr.
Attorney for the Petitioner

CERTIFICATE OF MAILING

I hereby certify that on this 27th day of January, 2010, I served a true and correct copy of the within and foregoing document upon the attorney(s) or person(s) named below in the manner noted:

Molly J. Huskey
State Appellate Public Defender
PO Box 83720
Boise, ID 83720-0005

Lance Stevenson
Minidoka Prosecuting Attorney
PO Box 368
Rupert, ID 83350

Lawrence G. Wasden
Idaho Attorney General
PO Box 83720
Boise, ID 83720-0010

 X By depositing copies of the same in the United States mail, postage prepaid, at the post office in Rupert, Idaho.

 By hand delivering copies of the same to the office of the attorney(s) at the address stated above.

 By telecopying copies of the same to said attorney(s) at the telecopied number(s) _____, and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office in Rupert, Idaho.



Clayne S. Zollinger, Jr.

2010 JAN 29 AM 11:55

DUNN SMITH, CLERK
DEPUTY

Clayne S. Zollinger, Jr. (ISB #4172)
Attorney-at-Law
P.O. Box 210
Rupert, ID 83350
Office: (208) 436-1122
Fax: (208) 436-7837

Attorney for: Petitioner

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

WALLY K. SCHULTZ,	)	Case No. CV-2009-0047
)	
Petitioner,)	
)	
vs.	)	<u>NOTICE AND ORDER APPOINTING</u>
	)	<u>STATE APPELLATE PUBLIC</u>
STATE OF IDAHO,	)	<u>DEFENDER IN DIRECT APPEAL</u>
)	
Respondent.)	

TO: THE OFFICE OF THE IDAHO STATE APPELLATE PUBLIC DEFENDER

Clayne S. Zollinger, attorney for the Petitioner, Wally K. Schultz, appeared before this Court for hearing on the Motion to Dismiss on December 21, 2009.

The Petitioner has requested the aid of counsel in pursuing a direct appeal from the Order of in this District Court.

The Court being satisfied that said Petitioner is a needy person entitled to the services of the State Appellate Public Defender pursuant to Idaho Code §19-852 and §19-854 and the services of the State Appellate Public Defender are available pursuant to Idaho Code §19-863A;

IT IS HEREBY ORDERED, in accordance with Idaho Code §19-870, that the State Appellate Public Defender is appointed to represent the Petitioner in all matters as indicated herein, or until relieved by this Court's order.

IT IS FURTHER ORDERED that Clayne S. Zollinger, Jr. remain as appointed counsel for the purpose of filing any motion(s) in the District Court which, if granted, could affect judgment, order or sentence in the action. Clayne S. Zollinger, Jr. shall remain as appointed counsel until all motions have been decided and the time for appeal of those motions has run.

IT IS FURTHER ORDERED that pursuant to Idaho Code §18-963, that the County shall bear the cost of and produce to the State Appellate Public Defender a copy of the following within a reasonable time:

1. The entire Clerk's Record to include all preliminary, pretrial, trial, sentencing and post-trial motions, minutes, documents, briefs, pleadings or related items which are regularly kept in the Clerk's file;
2. All transcripts for all preliminary, pretrial, trial, evidentiary hearing and post-trial proceedings, conferences, voir dire, motion arguments, or related proceedings which are recorded by the Court and which have been previously prepared. All other transcripts to be provided in accordance with time lines set forth by the Idaho Supreme Court after the Notice of Appeal has been filed;
3. The pre-sentence investigation report;
4. All exhibits which can be copied onto an 8 1/2 by 11 inch paper size;
5. A list of all exhibits which cannot be copied onto an 8 1/2 inch paper size, and
6. A docket sheet for both Magistrate and District Court documents or proceedings.

If the State Appellate Public Defender's Office discovers during appellate preparation that an item, within control of the Clerk or Reporter is missing, omitted or not requested and it is necessary to the appeal, the items shall be produced and the cost shall be paid by the County.

The State Appellate Public Defender's Office is provided the following information by the Court:

1. The Petitioner is in custody of the Idaho State Correctional Institution;
2. The Defendant's current address is:

Wally K. Schultz #19376
I.S.C.I. Unit-14A
P O Box 14
Boise, ID 83707-0014

DATED this 29th day of January, 2010.



District Judge

Clayne S. Zollinger, Jr. (ISB #4172)

Attorney-at-Law

P.O. Box 210

Rupert, ID 83350

Office: (208) 436-1122

Fax: (208) 436-7837

Attorney for: Petitioner

FILED
CASE #

2010 JUN 29 AM 11:55

DUNN, CLERK
DEPUTY

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

WALLY K. SCHULTZ,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

)
)
)
)
)
)
)
)
)
)
)

Case No. CV-2009-0221

**NOTICE AND ORDER APPOINTING
STATE APPELLATE PUBLIC
DEFENDER IN DIRECT APPEAL**

TO: THE OFFICE OF THE IDAHO STATE APPELLATE PUBLIC DEFENDER

Clayne S. Zollinger, attorney for the Petitioner, Wally K. Schultz, appeared before this Court for hearing on the Motion to Dismiss on December 21, 2009.

The Petitioner has requested the aid of counsel in pursuing a direct appeal from the Order of in this District Court.

The Court being satisfied that said Petitioner is a needy person entitled to the services of the State Appellate Public Defender pursuant to Idaho Code §19-852 and §19-854 and the services of the State Appellate Public Defender are available pursuant to Idaho Code §19-863A;

IT IS HEREBY ORDERED, in accordance with Idaho Code §19-870, that the State Appellate Public Defender is appointed to represent the Petitioner in all matters as indicated herein, or until relieved by this Court's order.

NOTICE AND ORDER APPOINTING APPELLATE PD- 1

IT IS FURTHER ORDERED that Clayne S. Zollinger, Jr. remain as appointed counsel for the purpose of filing any motion(s) in the District Court which, if granted, could affect judgment, order or sentence in the action. Clayne S. Zollinger, Jr. shall remain as appointed counsel until all motions have been decided and the time for appeal of those motions has run.

IT IS FURTHER ORDERED that pursuant to Idaho Code §18-963, that the County shall bear the cost of and produce to the State Appellate Public Defender a copy of the following within a reasonable time:

1. The entire Clerk's Record to include all preliminary, pretrial, trial, sentencing and post-trial motions, minutes, documents, briefs, pleadings or related items which are regularly kept in the Clerk's file;
2. All transcripts for all preliminary, pretrial, trial, evidentiary hearing and post-trial proceedings, conferences, voir dire, motion arguments, or related proceedings which are recorded by the Court and which have been previously prepared. All other transcripts to be provided in accordance with time lines set forth by the Idaho Supreme Court after the Notice of Appeal has been filed;
3. The pre-sentence investigation report;
4. All exhibits which can be copied onto an 8 1/2 by 11 inch paper size;
5. A list of all exhibits which cannot be copied onto an 8 1/2 inch paper size, and
6. A docket sheet for both Magistrate and District Court documents or proceedings.


If the State Appellate Public Defender's Office discovers during appellate preparation that an item, within control of the Clerk or Reporter is missing, omitted or not requested and it is necessary to the appeal, the items shall be produced and the cost shall be paid by the County.

The State Appellate Public Defender's Office is provided the following information by the Court:

1. The Petitioner is in custody of the Idaho State Correctional Institution;
2. The Defendant's current address is:

Wally K. Schultz #19376
I.S.C.I. Unit-14A
P O Box 14
Boise, ID 83707-0014

DATED this 29th day of January, 2010.



District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 29 day of January, 2010, I served a true and correct copy of the within and foregoing document upon the attorney(s) or person(s) named below in the manner noted:

Clayne S. Zollinger, Jr.
Attorney for Plaintiff
PO Box 210
Rupert, ID 83350

Molly J. Huskey
State Appellate P.D.
PO Box 83720
Boise, ID 83720-0005

Lance Stevenson
Minidoka Prosecuting Attorney
PO Box 368
Rupert, ID 83350

Wally K Schultz # 19376
I.S.C.I. Unit-14A
P.O. Box 14
Boise, ID 83707-0014

Clerk of the Supreme Court
PO Box 83720
Boise, ID 83720-0101

Lawrence G. Wasden
Idaho Attorney General
PO Box 83720
Boise, ID 83720-0010

_____ By depositing copies of the same in the United States mail, postage prepaid, at the post office in Rupert, Idaho.

_____ By hand delivering copies of the same to the office of the attorney(s) at the address stated above.

_____ By telecopying copies of the same to said attorney(s) at the telecopied number(s) _____, and by then mailing copies of the same in the United States Mail, postage prepaid, at the post office in Rupert, Idaho.

DUANE SMITH
Clerk of Court


Deputy Clerk

IDAHO SUPREME COURT

Clerk of the Courts
(208) 334-2210



IDAHO COURT OF APPEALS

P.O. Box 83720
Boise, Idaho 83720-0101

2010 FEB -8 AM 11:13
DUANE SMITH, CLERK
DEPUTY

DUANE SMITH, CLERK
Attn: SANTOS
MINIDOKA COUNTY COURTHOUSE
PO BOX 368
RUPERT, ID 83350

NOTICE OF APPEAL FILED (T)

Docket No. 37370-2010 WALLY KAY SCHULTZ v. Minidoka County District Court
STATE OF IDAHO #2009-47

A NOTICE OF APPEAL in the above-entitled matter was filed in this office on FEBRUARY 3, 2010. The DOCKET NUMBER shown above will be used for this appeal regardless of eventual Court assignment.

The CLERK'S RECORD and REPORTER'S TRANSCRIPT must be filed in this office on or before APRIL 10, 2010.

The REPORTER'S TRANSCRIPT MUST BE LODGED with the District Court Clerk or Agency **35 DAYS PRIOR** to the date of filing in this office.

THE REPORTER SHALL FILE A NOTICE OF LODGING WITH THIS COURT.

For the Court:
Stephen W. Kenyon
Clerk of the Courts

02/04/2010 DB

SCANNED

IDAHO SUPREME COURT

Clerk of the Courts
(208) 334-2210



IDAHO COURT OF APPEALS

P.O. Box 83720
Boise, Idaho 83720-0101

FILED
CASE #
2010 FEB -8 AM 11:15
DUANE SMITH, CLERK
DEPUTY

DUANE SMITH, CLERK
Attn: SANTOS
MINIDOKA COUNTY COURTHOUSE
PO BOX 368
RUPERT, ID 83350

NOTICE OF APPEAL FILED (T)

Docket No. 37371-2010 WALLY KAY SCHULTZ v. Minidoka County District Court
STATE OF IDAHO #2009-221

A NOTICE OF APPEAL in the above-entitled matter was filed in this office on FEBRUARY 3, 2010. The DOCKET NUMBER shown above will be used for this appeal regardless of eventual Court assignment.

The CLERK'S RECORD and REPORTER'S TRANSCRIPT must be filed in this office on or before APRIL 10, 2010.

The REPORTER'S TRANSCRIPT MUST BE LODGED with the District Court Clerk or Agency **35 DAYS PRIOR** to the date of filing in this office.

THE REPORTER SHALL FILE A NOTICE OF LODGING WITH THIS COURT.

For the Court:
Stephen W. Kenyon
Clerk of the Courts

02/04/2010 DB

SCANNED

IDAHO SUPREME COURT

Clerk of the Courts
(208) 334-2210



IDAHO COURT OF APPEALS

FILED - DISTRICT COURT
CASE #

P.O. Box 83720

Boise, Idaho 83720-0101

2010 FEB 11 AM 10:18

DUANE
[Signature]
CLERK
DEPUTY

DUANE SMITH, CLERK
Attn: SANTOS
MINIDOKA COUNTY COURTHOUSE
PO BOX 368
RUPERT, ID 83350

CLERK'S CERTIFICATE FILED

Docket No.

37370-2010(37371-2010)

WALLY KAY SCHULTZ v.
STATE OF IDAHO

Minidoka County District
Court

DC Docket #
2009-47

Enclosed is a copy of a the CLERK'S CERTIFICATE for the above-entitled appeal, which was filed in this office on this date.

Please examine carefully the TITLE and the CERTIFICATE and advise the District Court Clerk (or the Agency secretary, if applicable) AND this office of any errors detected on this document.

The TITLE in the CERTIFICATE must appear on all DOCUMENTS filed in this Court, including all BRIEFS. An abbreviated version of the TITLE may be used if it clearly identifies the parties to this appeal when the title is extremely long.

For the Court:
Stephen W. Kenyon
Clerk of the Courts

02/10/2010

118

SCANNED

RECEIVED
IDaho SUPREME COURT
COURT OF APPEALS

2010 FEB -9 AM 8:53

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

* * * * *

WALLY KAY SCHULTZ	)	SUPREME COURT NO. 37370-2010
)	
Petitioner/Appellant,)	
	)	CLERK'S CERTIFICATE OF
Vs.	)	APPEAL
)	
STATE OF IDAHO,)	
)	
Respondent/Respondent on Appeal)	

APPEAL FROM THE FIFTH JUDICIAL DISTRICT MINIDOKA COUNTY

HONORABLE MICHAEL R. CRABTREE

CASE NO.: CV-2009-47*D

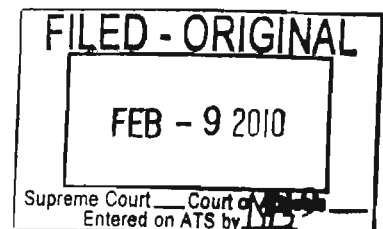
ORDER OR JUDGMENT APPEALED FROM:

Order Dismissing Petitioner's case entered in the above entitled action on the 8th day of January, 2010, the Honorable Michael R. Crabtree, presiding.

ATTORNEY FOR APPELLANT: Molly Husky, IDAHO STATE APPELLATE
PUBLIC DEFENDER, 3647 Lake Harbor Lane, Boise, ID 83707

ATTORNEY FOR RESPONDENT: Lawrence G. Wasden, IDAHO ATTORNEY
GENERAL, P. O. Box 83720, Boise, ID 83720-0010

APPEALED BY: Defendant: Wally K. Schultz



APPEALED AGAINST: Respondent, State of Idaho

NOTICE OF APPEAL FILED: January 27, 2010

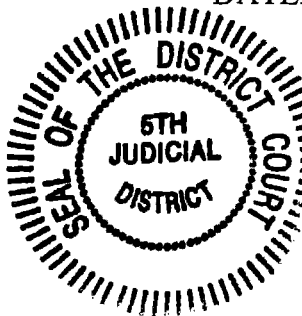
AMENDED NOTICE OF APPEAL FILED; N/A

APPELLATE FEE PAID: NA

WAS DISTRICT COURT REPORTER'S TRANSCRIPT REQUESTED: Yes

NAME OF COURT REPORTER: Maureen Newton, hand delivered

DATED: February 8, 2010



Duane Smith
Clerk of the District Court

By: *Santos Hays*
Deputy Clerk of the District Court

FILED-DIST. COURT
CASE #

2010 FEB 18 AM 11:11

DUANE CLERK
DEPUTY

In the Supreme Court of the State of Idaho

WALLY KAY SCHULTZ,

Petitioner-Appellant,

v.

STATE OF IDAHO,

Respondent-Respondent on Appeal.

WALLY KAY SCHULTZ,

Petitioner-Appellant,

v.

STATE OF IDAHO,

Respondent-Respondent on Appeal.

)
)
) ORDER CONSOLIDATING APPEALS
)
)

) Supreme Court Docket No. 37370-2010
) Minidoka County Docket No. 2009-47
)
)
)

)
)
) Supreme Court Docket No. 37371-2010
) Minidoka County Docket No. 2009-221
)
)
)

It appearing that these appeals should be consolidated for all purposes for reasons of judicial economy; therefore, good cause appearing,

IT HEREBY IS ORDERED that appeal No. 37370 and 37371 shall be CONSOLIDATED FOR ALL PURPOSES under No. 37370, but all documents filed shall bear both docket numbers.

IT FURTHER IS ORDERED that the District Court Clerk shall prepare a CLERK'S RECORD, which shall include the documents requested in the Notices of Appeal, together with a copy of this Order.

IT FURTHER IS ORDERED that the District Court Reporter shall prepare a REPORTER'S TRANSCRIPT, which shall include the transcripts requested in the Notices of Appeal.

DATED this 4th day of February 2010.

For the Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
District Court Reporter

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

* * * * *

WALLY KAY SCHULTZ,

Petitioner/Appellant,
vs.

STATE OF IDAHO,

Respondent/Respondent on Appeal.

) **Supreme Court No. 37370-2010**

)

) **District Court No. CV-2009-47*D**
) **CV 2009-221*D**

)

) **CLERK'S CERTIFICATE OF**
) **RECORD**

)

)

)

STATE OF IDAHO)

)ss.

County of Minidoka)

I, DUANE SMITH, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Minidoka, do hereby certify that the above and foregoing record in the above-entitled case was compiled and bound under my direction, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by counsel.

I FURTHER CERTIFY that the Notice of Appeal was filed on the 25TH day of February, 2010



DUANE SMITH
Clerk of the District Court

By: Santos Garza
Santos Garza, Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

* * * * *

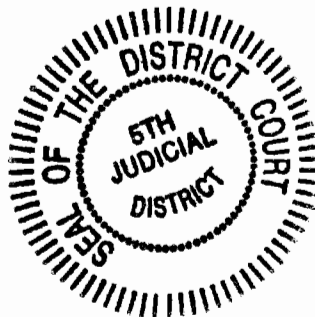
WALLY KAY SCHULTZ,	) Supreme Court No. 37370-2010
)
Petitioner/Appellant,	) District Court No. CV-2009-47*D
vs.	) CV 2009-221*D
)
)
STATE OF IDAHO,	) CLERK'S CERTIFICATE OF
	) SERVICE
)
Respondent/Respondent on Appeal.)
_____)

I, Santos Garza, Deputy Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Minidoka, do hereby certify that I have personally served or mailed by United States Mail, postage prepaid, one copy of the Transcript on Appeal and the Clerk's Record to each of the parties or their attorney of record as follows:

Lawrence Wasden, Esq.
IDAHO ATTORNEY GENERAL
P. O. Box 83720
Boise, ID 83720-0010

Molly J. Huskey
IDAHO STATE APPELLATE PUBLIC DEFENDER
3647 Lake Harbor Lane
Boise, ID 83703

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court in Rupert, Idaho, the 25TH day of February, 2010.



DUANE SMITH
Clerk of the District Court

By: Santos Garza
Santos Garza, Deputy Clerk